SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 704

IRENE MORGAN, APPELLANT,

vs.

COMMONWEALTH OF VIRGINIA

APPEAL FROM THE SUPREME COURT OF APPEALS OF THE STATE OF VIRGINIA

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[fol. 1]

IN THE SUPREME COURT OF APPEALS OF VIRGINIA AT RICHMOND

Record No. 2974

IRENE MORGAN

versus

COMMONWEALTH OF VIRGINIA

Petition for Writ of Error

To the Honorable Judges of the Supreme Court of Appeals of Virginia:

Your petitioner, Irene Morgan, respectfully represents that on the 16th day of July, 1944, a warrant was issued upon the oath of R. P. Kelly charging that, on the date aforesaid, she did "Unlawfully refuse to move back on the Greyhound Bus in the section for colored people"; that whereupon she was tried in the Circuit Court of Middlesex County without a jury, trial by jury having been waived, upon an amended warrant charging that, on the date aforesaid, she did "Unlawfully refuse and fail to obey the direction of the driver or operator of the Greyhound Bus Lines to change her seat and to move to the rear of the bus and occupy a seat provided for her, in violation of section 5 of the Act, Michie Code of 1942, section 4097dd"; that whereupon the said Court found her guilty of said offense and sentenced her to pay a fine of Ten ($10.00) Dollars, and final judgment thereupon was entered on the 18th day of October, 1944.

A transcript of the record in this case and of the judgment therein is herewith filed as a part of this petition.

[fol. 2] ERRORS ASSIGNED

Your petitioner is advised and represents to your Honors that the said judgment is erroneous, and that she is aggrieved thereby in the following particulars, namely:

First. The action of the Court in overruling petitioner's motion, first made at the conclusion of the presentation of the Commonwealth's evidence-in-chief, to strike the evi-

dence of the Commonwealth and dismiss the case upon the ground that the evidence introduced by the Commonwealth was legally insufficient to sustain a conviction of the crime charged in the amended warrant, upon which she was being tried and that no judgment thereupon could lawfully be rendered against her, for the following reasons, to-wit: that the law upon which the prosecution was based could not constitutionally be applied to her as she was, as shown by the evidence, an interstate passenger traveling upon the vehicle of an interstate public carrier, and that its application to such a passenger would be in violation of Article 1, Section 8, of the Constitution of the United States; and that under settled rules of construction said law could not be construed to apply to a passenger in interstate commerce, and that it must be construed as limited in its operation to passengers in intrastate commerce; which motion was renewed and again overruled at the conclusion of the entire case after both the Commonwealth and your petitioner had rested.

Bill of Exception No. 2, Record, pp. 34-35.

Second. The action of the Court in overruling petitioner's motion to set aside said Court's decision and judgment of her guilt of the aforesaid offense, and to award her a new trial, which motion was predicated upon the same grounds and reasons aforesaid, and upon the additional ground and reason that said decision and judgment of her guilt was contrary to the evidence, and lacking in evidence sufficient to support the same.

Bill of Exception No. 3, Record, pp. 36-37.

Third. The action of the Court in overruling petitioner's motion for a new trial, which motion was predicated upon the same grounds and reasons aforesaid, and upon the additional ground and reason that said Court's decision and judgment of her guilt was contrary to the evidence, and lacking in evidence sufficient to support the same.

[fol. 3] Bill of Exception No. 4, Record, pp. 38-39.

Questions Involved in the Appeal

These assignments of error present two questions:

First: Is the statute upon which petitioner was prosecuted, if construed as applicable to a passenger in interstate commerce, constitutional?

Second. Should the statute upon which petitioner was prosecuted be construed as limited in its operation to passengers in intrastate commerce, and, therefore, as inapplicable to petitioner?

Statement of the Facts

In the statement of the facts and the argument, petitioner will be referred to as the defendant, in accordance with the position occupied by her in the trial court.

On July 16, 1944, defendant, who is a Negro or colored person (R., pp. 9, 21), was a passenger upon a bus of the Richmond Greyhound Lines, Inc. She boarded the bus at Hayes Store, in Gloucester County, Virginia, and was traveling to the City of Baltimore, Maryland (R., pp. 9, 21). R. P. Kelly, an employee of the Greyhound Lines for six years, was the driver in charge and control of the bus (R., pp. 9, 11, 21).

When the bus arrived in Saluda, Virginia, the driver perceived defendant and another colored woman, the latter carrying an infant, seated in a seat forward of the long seat in the extreme rear of the bus (R., pp. 9, 10). Defendant was requested by the driver to move from said seat, and, upon her refusal so to do, the driver procured a warrant charging the offense for which she was prosecuted in the court below.

As to the condition of the bus, the events occurring and the circumstances leading up to and surrounding defendant's refusal to leave her seat, the testimony introduced by the Commonwealth and the defendant, respectively, is in hopeless conflict. Defendant concedes the binding effect of the decision of the trial court in this regard, but submits that as it was shown without contradiction that she and the Greyhound Company were, respectively, interstate passenger and carrier, she could not be prosecuted for violating the statute aforesaid upon the basis of either the Commonwealth's or her own evidence.

The evidence of the Commonwealth, consisting chiefly of the testimony of the bus driver, tended to show that at the [fol. 4] time defendant's removal from the seat was sought, there were two vacancies on the long rear seat in the extreme rear of the bus, which seat is designed to accommodate five persons, and was then occupied by three colored passengers; that all other seats in the bus were occupied;

that defendant and her seatmate were requested to move back into these seats, the driver advising them that under the rules of the bus company, he was required to seat white passengers from the front of the bus backward and colored passengers from the rear of the bus forward; that defendant refused to move, whereupon the driver procured a warrant charging her with a violation of the segregation law through her refusal to move.

On the other hand, defendant's version, which was corroborated by the testimony of four other witnesses, including Estelle Fields, her seatmate, was that the seat in question became vacant when the bus stopped in Saluda; that she then moved from the long rear seat which, from Hayes Store to Saluda, had been occupied by six or seven passengers, including herself, into said seat, the latter being the only vacant seat in the bus; that about five minutes later a white couple boarded the bus, whereupon the driver approached defendant and her seatmate and told them that they must get up so that the white couple might sit down; that she, the defendant, informed the driver that she was willing to exchange the seat she occupied for another on the bus, but was unwilling to stand, in reply to which the driver stated that colored passengers would be seated only after all white passengers had obtained seats that when asked by defendant where she would sit if she relinquished the seat she occupied the driver said nothing; that at the time she was directed to move, there were no vacant seats either on the long rear seat or elsewhere in the bus.

A second charge was lodged against the defendant as a consequence of events which allegedly occurred when the Sheriff and Deputy Sheriff of Middlesex came on the bus to execute the warrant obtained by the bus driver. The claim of the Commonwealth in this connection was that defendant resisted said officers in the discharge of their duties. This claim was substantially denied by defense witnesses, but defendant was convicted of the second offense also. By consent of the Commonwealth, the defendant, and the Court, both charges were tried together (R., p. 3), but no appeal from the conviction on the resisting charge was taken.

It appeared without controversy that the sources of the difficulties aboard the bus, whatever they may have been, were the efforts to remove defendant from the seat which

she occupied. The bus driver admitted that neither he nor [fol. 5] anyone else on the bus had any difficulties whatsoever with defendant until he sought to move her from her seat (R., p. 16), and both the Sheriff and Deputy Sheriff testified that defendant was in all respects orderly and well-behaved and caused no trouble whatsoever until efforts were commenced to remove her from the seat (R., pp. 18; 20).

The driver also testified that under the rules of the bus company all colored passengers were required to be seated from the rear of the bus forward and *that* all white passengers from the front of the bus backward, and that the general custom and policy pursued by his company upon buses traveling in or through the State of Virginia was to assign seats to colored and white passengers in this manner (R., p. 16), and so far as the record discloses, the sole ground upon which defendant's removal was sought and effected was that she is a Negro.

That defendant, at the time she allegedly committed the offense with which she was charged, and for which she was convicted, was a passenger traveling in interstate commerce upon the vehicle of an interstate public carrier, is conclusively established by the uncontroverted evidence for the Commonwealth as well as the defendant.

The Richmond Greyhound Lines, Incorporated, is regularly engaged in the business of transporting passengers for hire and reward from points within the State of Virginia to various points throughout the United States, including the City of Baltimore, Maryland, and was so engaged on July 16, 1944, the date upon which the events for which defendant was prosecuted occurred (R., p. 12). Passengers traveling to points outside the State of Virginia are, and were, on this day, regularly taken aboard its buses in Gloucester County, Virginia, including Hayes Store, and transported therein to points outside the State of Virginia (R., p. 12).

On July 15, 1944, defendant had purchased from the regular agent of the Richmond Greyhound Lines, Incorporated, at its ticket office at Hayes Store, Virginia, a through ticket for transportation from Hayes Store to Baltimore, Maryland (R., pp. 12, 13, 21). The stub of this ticket, which was introduced into evidence (R., p. 13), sets forth Hayes Store as the point of departure and Baltimore as the point of destination (R., p. 13). Defendant, as the holder of said

ticket, thereby became entitled to transportation from Hayes Store, Virginia, to Baltimore, Maryland, in a Greyhound bus (R., p. 12), and was entitled to transportation between the points aforesaid on July 16, 1944, in the bus upon which occurred the incidents out of which the prosecution grew (R., p. 12).

Upon boarding the bus at Hayes Store, for transportation [fol. 6] to Baltimore, defendant surrendered the ticket and R. P. Kelly, the driver, accepted the same (R., pp. 12, 21). Kelly was personally driving and operating the bus from the City of Norfolk, Virginia, to Baltimore (R., pp. 9, 11). This bus regularly made and was on that day making a continuous or through trip from Norfolk to Baltimore, traveling by way of and through the City of Washington, District of Columbia (R., pp. 11, 12).

After the arrest of defendant and her removal from the bus, Kelly prepared a transfer or token, identified at the trial by both Kelly (R., pp. 13, 14) and defendant (R., pp. 21, 22), in order that defendant might employ it for transportation from Saluda, Virginia, to Baltimore, Maryland, or for a cash refund of the fare paid for that portion of her trip between the said two points (R., p. 14). Kelly punched this transfer at the appropriate places to show Saluda as the point of beginning and Baltimore as the point of ending of the incompleted portion of her trip (R., pp. 14, 15).

Kelly testified that he would not have prepared or issued a transfer showing Saluda as the point of beginning and Baltimore as the point of ending, unless defendant had held a ticket entitling her to transportation on his bus to Baltimore (R., p. 15); and that he knew that all of the colored passengers remaining on the bus in Saluda, after those destined there had been discharged, held tickets to and were traveling to Baltimore, Maryland (R., p. 15). Defendant testified that she had no intention of leaving the bus prior to its arrival in Baltimore (R., p. 21).

At the conclusion of the presentation of the Commonwealth's evidence-in-chief, defendant moved to strike the evidence of the Commonwealth and to dismiss the case, upon the ground that the evidence for the Commonwealth was legally insufficient to sustain a conviction of the offense with which she was charged, and that no judgment thereupon could lawfully be rendered against her, for the reason that the statute upon which the prosecution was based

could not constitutionally be applied to her as she was, as shown by the evidence, an interstate passenger traveling upon the vehicle of an interstate public carrier, and that its application to such a passenger would be in violation of Article I, Section 8, of the Constitution of the United States, and also for the reason that under settled rules of construction said law could not be construed to apply to a passenger in interstate commerce, and that it must be construed as limited in its operation to passengers in intrastate commerce (R., pp. 4, 20, 21, 34). At the conclusion of the entire case, after both the Commonwealth and the defendant had [fol. 7] rested, this motion was renewed (R., pp. 4, 5, 32, 33, 34, 35). After the Court had returned a finding that defendant was guilty of the offense charged (R., p. 5), defendant moved to set aside said finding (R., pp. 5, 6, 36, 37), and also moved for a new trial (R., pp. 6, 38, 39) upon the same grounds and for the same reasons. Each of said motions the Court overruled, to which action of the Court defendant in each instance excepted. Final judgment was entered sentencing defendant to pay a fine of $10.00 (R., pp. 6, 7).

Argument

I.

The Statute Upon Which the Prosecution was Based, if Construed As Applicable to Defendant, a Passenger in Interstate Commerce, Is Unconstitutional and Void.

The Statutes Involved

In 1930, the General Assembly of Virginia enacted a statute described by its title as "An Act to provide for the separation of white and colored passengers in passenger motor vehicle carriers within the State; to constitute the drivers of said motor vehicles special policemen, with the same powers given to conductors and motormen of electric railways by general law." (Acts of Assembly, 1930, Chap. 128.)

This statute, now appearing as Sections 4097z to 4097dd of Michie's Code of Virginia, 1942, requires all passenger motor vehicle carriers to separate the white and colored passengers in their motor busses, and to set apart and

designate in each bus seats or portions thereof to be occupied, respectively, by the races, and constitutes the failure and refusal to comply with said provisions a misdemeanor (Sec. 4097z); forbids the making of any difference or discrimination in the quality or convenience of the accommodations so provided (Sec. 4097aa); confers the right and obligation upon the driver, operator or other person in charge of such vehicle, to change the designation so as to increase or decrease the amount of space or seats set apart for either race at any time when the same may be necessary or proper for the comfort or convenience of passengers so to do; forbids the occupancy of contiguous seats on the same bench by white and colored passengers at the same time; authorizes the driver or other person in charge of the vehicle to require any passenger to change his or her seat [fol. 8] as it may be necessary or proper, and constitutes the failure or refusal of the driver, operator or other person in charge of the vehicle, to carry out these provisions a misdemeanor (Sec. 4097bb); constitutes each driver, operator, or other person in charge of the vehicle, while actively engaged in the operation of the vehicle, a special policeman, with all of the powers of a conservator of the peace in the enforcement of the provisions of this statute, the maintenance of order upon the vehicle, and while in pursuit of persons for disorder upon said vehicle, for violating the provisions of the act, and until such persons as may be arrested by him shall have been placed in confinement or delivered over to the custody of some other conservator of the peace or police officer, and protects him against the consequences of error in judgment as to the passenger's race, where he acts in good faith and the passenger has failed to disclose his or her race (Sec. 4097cc). Section 4097dd, upon which the prosecution in this case was based, reads as follows:

"All persons who fail while on any motor vehicle carrier, to take and occupy the seat or seats or other space assigned to them by the driver, operator or other person in charge of such vehicle, or by the person whose duty it is to take up tickets or collect fares from passengers therein, or who fail to obey the directions of any such driver, operator or other person in charge, as aforesaid, to change their seats from time to time as occasions require, pursuant to any lawful rule, regulation or custom in force by such lines as to assign-

ing separate seats or other space to white and colored persons, respectively, having been first advised of the fact of such regulation and requested to conform thereto, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than five dollars nor more than twenty-five dollars for each offense. Furthermore, such persons may be ejected from such vehicle by any driver, operator or person in charge of said vehicle, or by any police officer or other conservator of the peace; and in case such persons ejected shall have paid their fares upon said vehicle, they shall not be entitled to the return of any part of same. For the refusal of any such passenger to abide by the request of the person in charge of said vehicle as aforesaid, and his consequent ejection from said vehicle, neither the driver, operator, person in charge, owner, manager nor bus company operating said vehicle shall be liable for damages in any court."

[fol. 9] *The Defendant's Contention*

Defendant is unconcerned with the applicability of the statute aforesaid to passengers whose journeys commence and end within the state. Nor does she base her contention of invalidity upon a claim of inequality or inferiority in the accommodations afforded members of her race. Her position is that since it appears without controversy that she was a passenger in interstate commerce upon an interstate carrier, the statute could not constitutionally apply, and therefore affords no basis for her prosecution.

Such Statutes Are Unconstitutional and Void When Applicable to Interstate Passengers

That state laws of the kind upon which this prosecution was based cannot be permitted to operate upon interstate commerce is apparent from principles too well known and settled to require citation of authority.

In recognition of the necessity of uniformity through national control in the regulation of commerce among the states, the Constitution of the United States, in Article I, Section 8, confers the regulatory power upon Congress and invests it with power to determine what these regulations shall be. Whenever the subject matter of regulation is in its nature national, and admits of only one uniform

system or plan of regulation, the power of Congress is exclusive, and cannot be encroached upon by the states. There is no room for the operation of the police power of the state where the legislature passes beyond the exercise of its legitimate authority and undertakes to regulate interstate commerce by imposing burdens upon it.

It has therefore been flatly declared by the highest Court in the land that legislation which seeks to direct the interstate carrier with respect to the policy which it is to pursue in transporting the races is unconstitutional and void.

Hall v. *DeCuir*, 95 U. S. 485, 24 L. Ed. 547 (1877).

In that case the defendant was the owner of a steamboat licensed under Federal law for the coasting trade plying between New Orleans, Louisiana, and Vicksburg, Mississippi, and touching at intermediate points within and without Louisiana. Plaintiff, a Negro, took passage from New Orleans to Hermitage, Louisiana. Upon being refused a place in a cabin set apart by defendant for exclusive occupancy by white persons, plaintiff brought an action for damages under the Louisiana Act of 1869, which [fol. 10] prohibited "discrimination" because of race or color, and provided a right of action to recover damages. The defense was that the statute was inoperative as regards the defendant because, as to him, it was an attempt to regulate commerce among the states. The trial court gave judgment for the plaintiff, which was affirmed by the Supreme Court of Louisiana. In the Supreme Court of the United States, the judgment was reversed. The Court pointed out that the state court had construed the statute and held that it applied to interstate commerce, and that it guaranteed a passenger in interstate commerce equal rights and privileges in all parts of the conveyance, without discrimination on account of race or color, and that this construction was binding upon the Supreme Court and therefore excluded from the case all questions concerning its application to intrastate passengers. The Court, by Chief Justice Waite, said:

"But we think it may safely be said that state legislation which seeks to impose a direct burden upon interstate commerce, or to interfere directly with its freedom, does encroach upon the exclusive power of Congress. The statute now under consideration in our opinion occupies that posi-

tion. * * * While it purports only to control the carrier when engaged within the state, it must necessarily influence his conduct to some extent in the management of his business throughout his entire voyage. His disposition of passengers taken up and put down within the State, or taken up to be carried without, cannot but affect in a greater or less degree those taken up without and brought within, and sometimes those taken up and put down without. A passenger in the cabin set up for the use of whites without the state must, when the boat comes within, share the accommodations of that cabin with such colored persons as may come on board afterwards if the law is enforced. It was to meet just such a case that the commercial clause in the Constitution was adopted. * * * Each state could provide for its own passengers and regulate the transportation of its own freight, regardless of the interests of others—* * * On one side of the river or its tributaries he might be required to observe one set of rules, and on the other another. Commerce cannot flourish in the midst of such embarrassment. No carrier of passengers can conduct his business with satisfaction to himself, or comfort, to those employing him, if on one side of a State line his passengers, both white and colored, must be permitted to occupy the same cabin, and on the other be kept separate. Uniformity in the regulations by [fol. 11] which he is to be governed from one end to the other of his route is a necessity in his business."

Pointing out that the exclusive legislative power, as respects interstate commerce, rests in Congress, the Court further said:

"This power of regulation may be exercised without legislation as well as with it. By refraining from action, Congress, in effect, adopts as its own regulations those which the common law or the civil law, where that prevails, has provided for the government of such business."

It was further held that Congressional inaction left the carrier free to adopt reasonable rules and regulations, and the statute in question sought to take away from him that power. It was therefore concluded that

"If the public good require such legislation it must come from Congress and not from the States."

Mr. Justice Clifford, in a concurring opinion, pointed out that

"Unless the system or plan of regulation is uniform, it is impossible of fulfillment. Mississippi may require the steamer carrying passengers to provide two cabins and tables for passengers, and may make it a penal offense for white and colored persons to be mixed in the same cabin or at the same table. If Louisiana may pass a law forbidding such steamer from having two cabins and two tables—one for white and the other for colored persons—it must be admitted that Mississippi may pass a law requiring all passenger steamers entering her ports to have separate cabins and tables, and make it penal for white and colored persons to be accommodated in the same cabin or to be furnished with meals at the same table. Should state legislation in that regard conflict, then the steamer must cease to navigate between ports of the states having such conflicting legislation, or must be exposed to penalties at every trip."

The same reasons which operated to destroy the constitutionality of the statute there involved operate equally to render unconstitutional legislation which seeks to compel a separation of interstate passengers upon a racial basis. Consequently, notwithstanding decisions in two states to the contrary, which have elsewhere been disapproved,

[fol. 12] *Illinois Central Railroad Company* v. *Redmond*, 119 Miss. 765, 81 S. 115 (1919);

Southern Railway Co. v. *Norton*, 112 Miss. 302, 73 S. 1 (1916);

Alabama & Vicksburg Ry. Co. v. *Morris*, 103 Miss. 511, 60 S. 41 (1912);

Smith v. *State*, 100 Tenn. 494, 49 S. W. 566 (1900);

the conclusion has been uniformly reached in the federal courts, and in the majority of state courts, that statutes requiring separate accommodations for white and Negro passengers are unconstitutional when applied to interstate passengers.

Washington, B. & A. Elec. R. Co. v. *Waller*, 53 App. D. C. 200, 289 F. 598, 30 A. L. R. 50 (1923);

Thompkins v. *Missouri, K. & T. Ry. Co.* (C. C. A. 8th) 211 F. 391 (1914);

McCabe v. *Atchison, T. & S. F. Ry. Co.* (C. C. A. 8th) 186 F. 966 (1911);

Anderson v. *Louisville & N. R. Co.* (C. C. Ky.), 62 F. 46 (1894);

Brown v. *Memphis & C. R. Co.* (C. C. Tenn.), 5 F. 499 (1880);

State v. *Galveston H. & S. A. Ry. Co.* (Tex. Civ. App.), 184 S. W. 227 (1916);

Huff v. *Norfolk & S. R. Co.*, 171 N. C. 203, 88 S. E. 344 (1916);

State v. *Jenkins*, 124 Md. 376, 92 A. 773 (1914);

Hart v. *State*, 100 Md. 596, 60 A. 457 (1905);

Carey v. *Spencer* (N. Y. Sup. Ct.), 36 N. Y. S. 886 (1895);

State ex rel. Abbott v. *Hicks*, 44 La. Ann. 770, 11 S. 74 (1892).

Such also has been the position of the Supreme Court of the United States where the same opinion has, in decisions subsequent to *Hall* v. *DeCuir*, been intimated or assumed.

McCabe v. *Atchison, T. & S. F. Ry. Co.*, 235 U. S. 151, 35 S. Ct. 69, 59 L. Ed. 169 (1914);

Chiles v. *Chesapeake & O. Ry. Co.*, 218 U. S. 71, 30 S. Ct. 667, 54 L. Ed. 936 (1910);

Chesapeake & O. Ry. Co. v. *Kentucky*, 179 U. S. 388, 21 S. Ct. 101, 45 L. Ed. 244 (1900);

Plessy v. *Ferguson*, 163 U. S. 537, 16 S. Ct. 1138, 41 L. Ed. 256 (1896);

[fol. 13] *Louisville, N. O. & T. Ry. Co.* v. *Mississippi*, 133 U. S. 587, 10 S. Ct. 348, 33 L. Ed. 784 (1890).

In *McCabe* v. *Atchison, Topeka & S. F. Ry. Co., supra*, the Eighth Circuit Court of Appeals was faced with the 1907 Oklahoma statute which required separate coaches and waiting rooms for white and colored passengers, and provided penalties for its violation by either the passengers or the carrier. Before the act went into effect, five Negro citizens of Oklahoma brought a suit in equity against five railroad companies to enjoin them from making racial distinctions upon the ground, *inter alia*, that the statute was repugnant to the commerce clause of the Federal Constitution. In holding that the act would be unconstitutional if applicable to interstate passengers, the Court said:

"It may be conceded that, if it applies to interstate transportation, it is a regulation of interstate commerce within

the meaning of the Constitution. We think this follows from the doctrine laid down by the Supreme Court in *Hall* v. *DeCuir*, 95 U. S. 485, 24 L. Ed. 547. * * * For like reasons, the Oklahoma law, if as properly construed, it embraces or relates to interstate commerce, at all, would also be a regulation of that commerce. It compels carriers when operating in that state to exclude colored persons from cars or compartments set apart for white persons. The only difference between the Louisiana and the Oklahoma law is that the one compels carriers to receive into and the other to exclude colored persons from cars or compartments carrying white persons. They act alike directly upon the carrier's business as its passenger crosses the state line. Hence, if one is a regulation of interstate commerce, the other must be. The contention, therefore, that the provisions of the Oklahoma statute do not amount to a regulation of interstate commerce, if they concern that commerce at all, is untenable."

Likewise, in *State ex rel. Abbott* v. *Hicks*, *supra*, the defendant, a Pullman official, was prosecuted for violation of the 1890 Louisiana act requiring separate coaches for the races. There was a plea to the jurisdiction and a motion to quash the information on the ground that the passenger involved was an interstate passenger. The lower court sustained a demurrer to the plea and motion, and the defendant took the case to the Supreme Court of Louisiana on *certiorari*, where the judgment was reversed. This court, construing the decision in *Louisville, New Orleans & Texas Ry. Co.* v. *Mississippi*, *supra*, held:

[fol. 14] "The terms of the decision left no doubt that the Court (Supreme Court of the United States) regarded the statute as unconstitutional if it applied to interstate passengers, and only upheld it because construed by the Supreme Court of Mississippi as applicable only to domestic passengers. * * * These decisions leave no room for question that the jurisprudence of the United States Supreme Court holds such statutes as the one here presented to be only valid in so far as they apply to domestic transportation of passengers or goods, and that, as applicable to interstate passengers or carriage, they are regulations of interstate commerce, prohibited to the states by the constitution of the United States."

Again, in *Huff* v. *Norfolk & Southern R. Co.*, *supra*, plaintiff, a white deputy sheriff who was carrying a Negro

prisoner from Norfolk, Virginia, to Newbern, North Carolina, was compelled by defendant to ride in a coach on defendant's train maintained for the exclusive occupancy of Negro passengers, in compliance with the statutes of North Carolina requiring separate accommodations for the races. He then brought this action for damages. In holding that the statute could not be applied to this case, the court said:

"While there is learned and forcible decision to the contrary (*Smith* v. *State*, 100 Tenn. 494, 46 S. W. 566), it seems to be the trend of opinion and the decided intimation of the Supreme Court of the United States, on the subject that state legislation of this character may not extend to a case of interstate traffic."

And, in *Hart* v. *State*, *supra*, the appellant, a Negro, held a ticket from New York to Washington entitling him to transportation over a line extending from Pennsylvania through Delaware and into Maryland. Upon his refusal to take the seat assigned to him, he was indicted under the 1904 Maryland statute requiring separate coaches for white and colored passengers. A plea in abatement was filed, whereupon the trial court sustained a demurrer to the plea and appellant was thereupon convicted. Upon appeal, however, the conviction was reversed. It was argued by the Attorney General for the state that the statute was constitutional as a police measure, although it affected interstate passengers, to which contention the court replied that

"Although the state has power to adopt reasonable police regulations to secure the safety and comfort of passengers [fol. 15] on interstate trains while within its borders, it is well settled, as we have seen, that it can do nothing which will directly burden or impede the interstate traffic of the carrier, or impair the usefulness of its facilities for such traffic. When the subject is national in its character and admits and requires uniformity of regulation affecting alike all the states, the power is in its nature exclusive, and the state cannot act. The failure of Congress to act as to matters of national character is, as a rule, equivalent to a declaration that they shall be free from regulation or restriction by any statutory enactment, and it is well settled that interstate commerce is national in its character. Applying these general rules to the particular facts in this case, and bearing in mind the application of the expressions used in

Hall v. *DeCuir* to cases involving questions more or less analogous to that before us, we are forced to the conclusion that this statute cannot be sustained to the extent of making interstate passengers amenable to its provisions. When a passenger enters a car in New York under a contract with a carrier to be carried through to the District of Columbia, if when he reaches the Maryland line, he must leave that car, and go into another, regardless of the weather, the hour of the day or the night, or the condition of his health, it certainly would, in many instances, be a great inconvenience and possible hardship. It might be that he was the only person of his color on the train, and no other would get on in the State of Maryland, but he, if the law is valid against him, must, as soon as he reaches the state line, leave the car he started in, and go into another, which must be furnished for him, or subject himself to a criminal punishment."

and that, therefore, the statute could not be sustained under the police power. The court added that it was convinced that if the Supreme Court of the United States were called to pass upon the precise question, it would hold such statute invalid as applicable to interstate passengers.

In *Anderson* v. *Louisville & N. R. Co.*, *supra*, plaintiff and his wife were forced, by the defendant, to occupy seats in the Negro coach upon two separate trips. Upon the first, they were traveling as first class passengers from Evansville, Indiana, to Madisonville, Kentucky, and were required to move into said coach when the train reached Kentucky. On the second trip, the trip was wholly within Kentucky. Suit was then brought against defendant wherein the court considered the constitutionality of the 1892 Kentucky statute calling for separate but equal facili- [fol. 16] ties for the races. It was held that the statute was invalid as its language was broad enough to extend its application to interstate as well as intrastate passengers and therefore constituted it a regulation of interstate commerce. Defendant's demurrer was accordingly overruled.

In *Carney* v. *Spencer*, *supra*, plaintiff, a Negro, bought a ticket for passage from New York to Knoxville, Tennessee. At or near the Tennessee line he was moved into the coach provided for Negro passengers pursuant to the provisions of the Tennessee separate coach law. This suit was for damages, being brought in a New York Court because de-

fendant company was in the hands of a receiver and the court of receivership had granted plaintiff leave to sue in New York. It was held that plaintiff was entitled to judgment, on the ground that the Tennessee statute, as applied to an interstate passenger, was unconstitutional.

In *Thompkins* v. *Missouri, K. & T. Ry. Co., supra*, plaintiff, a Negro, sued for damages arising from his ejection from a Pullman car in Oklahoma, and for his arrest, conviction and fine for disturbing the peace. He was a passenger from Kansas City, Missouri to McAlester, Oklahoma. The Oklahoma statute was in question, one of defendant's positions being that it acted in conformity therewith. It was held that, as plaintiff was an interstate passenger, the statute was irrelevant.

In *Brown* v. *Memphis & C. R. Co., supra*, plaintiff, a Negro, sued for her exclusion from the ladies' car on one of defendant's trains upon her refusal to take a seat in the smoking car. There was at the time a statute of Tennessee providing that all common law remedies for the exclusion of any person from public means of transportation were thereby abrogated, that no carrier should be bound to carry any person whom he should for any reason choose not to carry, that no right of action should exist in favor of any person so refused admission, and that the right of carriers as to the exclusion of persons from their means of transportation should be as perfect as that of any private person. Following *Hall* v. *DeCuir*, it was held that so far as this statute purported to apply to interstate passengers, it was unconstitutional, being a regulation of interstate commerce.

So long as uniform regulation remain a *sine qua non* of the growth of the interstate carrier, the orderly conduct of its business, and the protection of the national interest therein, the recognition of a power in the states to determine whether interstate traffic while within their boundaries [fol. 17] shall be subject to a legislative policy of segregation or non-segregation of the races is conducive only to a result which the commerce clause was intended to forbid. While such legislation purports merely to control the carrier while within the territorial limits of the state, it necessarily influences its conduct in the management of its business throughout its entire route, since all passengers, interstate as well as intrastate, are affected by the carrier's dis-

position of its passengers pursuant thereto. Since each state could legislate in its own interest without regard for the consequences, and the various enactments could differ in provision, a compliance with all would produce the kind of confusion and embarrassment in the midst of which commerce could not flourish. When it is perceived that the recognition of the validity of a state law requiring the segregation of the races would in turn necessitate the same recognition of a non-segregation statute, there is no limit to the carrier's burden.

Such injurious consequences are already at hand. An examination of the law of the six jurisdictions contiguous to Virginia demonstrates the diversity of policy in our immediate section of the nation. Two such jurisdictions (West Virginia and the District of Columbia) do not attempt to segregate the races in either interstate or intrastate commerce. Three others (Maryland, North Carolina and Kentucky) have, as appears from the second part of this argument, construed their laws as limited in operation to intrastate traffic. Only one (Tennessee) has held its law applicable to the interstate passenger. Not a single state on the Atlantic seaboard from Maine to Florida has decided that its state policy in this regard can control any other than its domestic commerce. Situated as it is in the path of a channel of interstate transportation, Virginia should not provide a stumbling block.

II

The Statute Upon Which This Prosecution Was Based Should Be Construed As Limited in Its Operation to Passengers in Intrastate Commerce, and Therefore As Inapplicable to Defendant

If limited in operation to intrastate passengers, the statute upon which this prosecution was based is valid, insofar as the commerce clause of the Federal Constitution is concerned. Defendant's position in this connection is that as a matter of statutory construction rather than constitu- [fol. 18] tional limitation, this statute did not apply to her. Well established canons compel this conclusion.

The Applicable Rules of Construction

Where the validity of a statute is assailed and there are two possible interpretations, by one of which the statute

would be unconstitutional and by the other it would be valid, the Court should adopt the construction which will uphold it and bring it into harmony with the Constitution, if its language will permit.

Miller v. *Commonwealth*, 172 Va. 639, 2 S. E. 2d 343 (1939);

Hannabass v. *Ryan*, 164 Va. 519; 180 S. E. 416 (1935);

Commonwealth v. *Carter*, 126 Va. 469, 102 S. E. 58 (1920);

Commonwealth v. *Armour & Co.*, 118 Va. 242, 87 S. E. 610 (1916).

The duty of the court to so construe a statute as to save its constitutionality when it is reasonably susceptible of two constructions includes the duty of adopting a construction that will not subject it to a succession of doubts as to its constitutionality. It is well settled that a statute must be construed, if fairly possible, so as to avoid not only the conclusion that it is unconstitutional, but also serious doubt upon that score.

National Labor Relations Board v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1, 57 S. Ct. 615, 81 L. Ed. 893, 108 A. L. R. 1352 (1937);

Crowell v. *Benson*, 285 U. S. 22, 52 S. Ct. 285, 76 L. Ed. 598 (1932);

South Utah Mines & Smelters v. *Beaver County*, 262 U. S. 325, 43 S. Ct. 577, 67 L. Ed. 1004 (1923);

Ann Arbor R. Co. v. *United States*, 281 U. S. 658, 50 S. Ct. 444, 74 L. Ed. 1098 (1930);

Re Keenan, 310 Mass. 166, 37 N. E. 2d 516, 137 A. L. R. 766 (1941).

In order to uphold the statute, the courts may restrict its application to the legitimate field of legislation, unless the act indicates a different intention on the part of its framers. A statute should not be given a broad construction if its validity can be saved by a narrower one.

South Utah Mines and Smelters v. *Beaver County*, *supra*; [fol. 19] *Schuylkill Trust Co.* v. *Pennsylvania*, 302 U. S. 508, 58 S. Ct. 295, 82 L. Ed. 392 (1938);

United States v. *Walters*, 263 U. S. 15, 44 S. Ct. 10, 68 L. Ed. 137 (1923);

Schoberg v. *United States* (C. C. A., 6th), 264 F. 1 (1920);

Mintz v. *Baldwin* (D. C., N. Y.), 2 F. Supp. 700 (1933).

The Construction of Carrier Racial Segregation Laws

In the vast majority of cases wherein there has arisen a question as to the validity of a state carrier racial segregation law upon the ground that it amounted to an unconstitutional interference with interstate commerce, the law has been construed as limited in its operation to passengers in intrastate commerce.

McCabe v. *Atchison, T. & S. F. Ry. Co.*, 235 U. S. 151, 35 S. Ct. 69, 59 L. Ed. 169 (1914);

Chiles v. *Chesapeake & O. Ry. Co.*, 218 U. S. 71, 30 S. Ct. 667, 54 L. Ed. 936 (1910);

Chesapeake & O. Ry. Co. v. *Kentucky*, 179 U. S. 388, 21 S. Ct. 101, 45 L. Ed. 244 (1900);

Louisville, N. O. & T. Ry. Co. v. *Mississippi*, 133 U. S. 587, 10 S. Ct. 348, 33 L. Ed. 784 (1890);

Washington, B. & A. Elec. R. Co. v. *Waller*, 53 App. D. C. 290, 289 F. 598, 30 A. L. R. 50 (1923);

South Covington & C. Ry. Co. v. *Commonwealth*, 181 Ky. 449, 205 S. W. 603 (1918);

McCabe v. *Atchison, T. & S. F. Ry. Co.* (C. C. A., 8th), 186 F. 966 (1911);

State v. *Galveston, H. & S. A. Ry. Co.* (Tex. Civ. App.), 184 S. W. 227 (1916);

O'Leary v. *Illinois Central R. Co.*, 110 Miss. 46, 69 S. 713 (1915);

State v. *Jenkins*, 124 Md. 376, 92 A. 773 (1914);

Chiles v. *Chesapeake & O. Ry. Co.*, 125 Ky. 299, 101 S. W. 386 (1907);

Southern Kansas Ry. Co. v. *State*, 44 Tex. Civ. App. 218, 99 S. W. 166 (1906);

Hart v. *State*, 100 Md. 596, 60 A. 457 (1905);

Ohio Valley Ry.'s Receiver v. *Lander*, 104 Ky. 431, 47 S. W. 344 (1898);

Louisville, N. O. & T. Ry. Co. v. *State*, 66 Miss. 662, 6 S. 203 (1889);

State, ex rel., Abbott v. *Hicks*, 44 La. Ann. 770, 11 S. 74 (1892).

[fol. 20] Thus, in *McCabe v. Atchison, T. & S. F. Ry. Co., supra*, a case involving the 1907 Oklahoma law which required separate coaches for the races, and providing penalties for its violation, five Negroes, citizens of Oklahoma, brought suit in equity before the law went into effect against five railroad companies to restrain its enforcement upon the ground, *inter alia*, that it was repugnant to the commerce clause. Of course, the highest court of Oklahoma had not construed the act. There was a demurrer to the bill which the trial court sustained. Upon appeal to the Circuit Court of Appeals for the Eighth Circuit, the judgment below was affirmed upon the ground that the act, in the absence of a different construction by the state court, must be construed as applying to intrastate transportation exclusively, and therefore as not contravening the commerce clause. The Circuit Court of Appeals said on this score:

"The question, then, is whether that statute, when properly construed, applies to interstate transportation, or whether it is limited in its application to that transportation which has its origin and ending within the confines of the state. No provision is found in the act indicating in any express terms that it was intended to apply to interstate commerce. All its provisions concerning the subject of legislation are general. Thus Section 1 provides that 'every railway company * * * doing business in this state, * * * shall provide separate coaches,' etc. Sections 2 and 6 make it unlawful 'for any person' to occupy any waiting room or ride in any coach not designated for the race to which he belongs. While, therefore, the language of the act, literally construed, is comprehensive enough to include railroads doing interstate business, and include passengers while making interstate trips, it neither in express terms nor by any implication other than that involved in the general language employed, manifests any intention to invade the exclusive domain of congressional legislation on the subject of interstate commerce. Local transportation, or that which is wholly within the state only, being within the competency of the state legislature, would naturally be presumed to have been alone contemplated in the law enacted by it. The constitutional inhibition against a state legislating concerning interstate com-

merce, and the uniform decisions of courts of high and controlling authority, emphasizing and enforcing that inhibition, without doubt, were actually as well as constructively known to the members of the legislature of Oklahoma. It is unreasonable to suppose they intended to legislate upon a subject known by them to be beyond their [fol. 21] power, and upon which an attempt to legislate might imperil the validity of provisions well within their power. Any other view would imply insubordination and recklessness, which cannot be imputed to a sovereign state."

Upon appeal to the Supreme Court of the United States, the same conclusion was reached and the rule of interpretation applied by the Circuit Court of Appeals confirmed.

Likewise, in *Chesapeake & O. Ry. Co.* v. *Kentucky, supra*, there was a review of the conviction of the railroad company, an interstate carrier, under the 1892 statute which provided that all railroads in the state must furnish separate but equal accommodations for the races. Defendant, in the trial court, had contended that the statute was unconstitutional as a regulation of interstate commerce. Its demurrer predicated upon this ground was overruled. The Court of Appeals of Kentucky construed the act as applying only to intrastate passengers, and affirmed the conviction, which the Supreme Court of the United States likewise affirmed. Said the latter Court, through Mr. Justice Brown:

"Of course this law is operative only within the state. • • • The real question is whether a proper construction of the act confines its operation to passengers whose journeys commence and end within the boundaries of the state or whether a reasonable interpretation of the act requires colored passengers to be assigned to separate coaches when traveling from and to points in other states. • • •

"This ruling (of the Court of Appeals of Kentucky) effectually disposes of the argument that the act must be construed to regulate the travel or transportation on the railroads of *all* white and colored passengers, while they are in the state without reference to where their journey commences and ends, and of the further contention that the policy would not have been adopted if the act had been con-

fined to that portion of the journey which commenced and ended within the state lines.

"Indeed, we are by no means satisfied that the Court of Appeals did not give the correct construction to this statute in limiting its operation to domestic commerce. It is scarcely courteous to impute to a legislature the enactment of a law which it knew to be unconstitutional, and if it were well settled that a separate coach law was unconstitutional, as applied to interstate commerce, the law applying on its face to *all* passengers should be limited to such as the legislature was competent to deal with. The Court of Appeals has found this to be the intention of the General Assembly in [fol. 22] this case, or as least, that if such were not its intention, the law may be supported as applying alone to domestic commerce. In thus holding the act to be severable, it is laying down a principle of construction from which there is no appeal."

There is ample room for this Court to avoid all constitutional difficulties with respect to the statute in question. It is not in terms applicable to interstate passengers. It has never been construed in this respect by this Court. It is not necessary to impute a frustrated motive to the legislature when settled principles require the limitation of its operation in order to remove all doubt as to its validity.

Conclusion

Your petitioner submits that for the reasons set forth in this her petition, which is hereby adopted as her opening brief, the judgment of the trial court is erroneous, and should be set aside, and prays that a writ of error may be granted to said judgment, and a *supersedeas* thereto awarded, and that the same may be reviewed and reversed.

Counsel for the petitioner hereby request that they be permitted to argue orally the matter contained in this petition upon the application for a writ of error and *supersedeas*, and certify that a copy hereof has been forwarded by registered mail to the Honorable Lewis Jones, Commonwealth's Attorney for Middlesex County, Virginia, who was Commonwealth's Attorney when this case was tried and who prosecuted the same on behalf of the Commonwealth. Said copy was mailed on the 5th day of February, 1945. The

original hereof is filed in the office of the Clerk of this court in Richmond, Virginia.

Irene Morgan, Petitioner, By Spottswood W. Robinson, III, Of Counsel.

Hill, Martin & Robinson, Consolidated Bank Building, Richmond 19, Virginia, Counsel for Petitioner.

[fol. 23] Certificate

I, Martin A. Martin, an attorney practicing in the Supreme Court of Appeals of Virginia, do certify that in my opinion the judgment complained of in the foregoing petition is erroneous and should be reviewed.

Martin A. Martin, Consoliadted Bank Building, Richmond 19, Virginia.

Received February 5, 1945.

M. B. Watts, Clerk.

March 6, 1945. Writ of error and *supersedeas* awarded by the Court. Bond $100.

M. B. W.

In Circuit Court of Middlesex County

Warrant—Filed July 22, 1944

State of Virginia,
County of Middlesex, to-wit:

To any Sheriff or Police Officer:

Whereas R. P. Kelly has this day made complaint and information on oath before me, G. C. Bourne, Justice of the Peace of the said County, that Irene Morgan in said county did on the 16th day of July, 1944: Unlawfully Refuse to move back on the Greyhound Bus in the section for colored people,

These are, therefore, to command you, in the name of the Commonwealth, to apprehend and bring before the Trial Justice of the said County, the body (bodies) of the above accused, to answer the said complaint and to be further dealt with according to law. And you are also directed to

[fol. 24] summon —— —— color —— Address —— as witnesses.

Given under my hand and seal, this 16th day of July, 1944.

G. C. Bourne, J. P. (Seal.)

Reverse Side of Said Warrant:

Docket No. A 1450, Court No. 330 File 40

Commonwealth

v.

Irene Morgan (c). Hayes Store, Va.

Warrant of Arrest

Executed this, the 16 day of July, 1944, by arresting Irene Morgan.

R. B. Segar, Sheriff.

Upon the examination of the within charge, I find the accused

July 18, 1944.

Upon a plea of not guilty to the within charge, and upon examination of witnesses, I find the accused guilty as charged and fix *his* punishment at a fine of $10.00 and —— days in jail and costs. Appeal noted. Bail set at $500.00. Let to Bail.

Catesby G. Jones, Trial Justice.

Fine	$10.00
Costs	5.25
Total	$15.25

Filed July 22, 1944.

C. W. Eastman, Clerk.

State of Virginia,
County of Middlesex, to-wit:

I, G. C. Bourne a justice of the peace in and for the [fol. 25] County aforesaid, State of Virginia, do certify that Mrs. Irene Morgan and Mrs. Ethel Amos, Sr., as her surety, have this day each acknowledged themselves in-

debted to the Commonwealth of Virginia in the sum of Five Hundred Dollars ($500.00), to be made and levied of their respective goods and chattels, lands, and tenements to the use of the Commonwealth to be rendered, yet upon this condition: That the said Irene Morgan, shall appear before the Trial Justice Court of Middlesex County, on the 18th day of July, 1944, at 10 A. M., at Saluda, Virginia, and at any time or times to which the proceedings may be continued or further heard, and before any court thereafter having or holding any proceedings in connection with the charge in this warrant, to answer for the offense with which *he* is charged, and shall not depart thence without the leave of said Court, the said obligation to remain in full force and effect until the charge is finally disposed of or until it is declared void by order of a competent court; and upon the further condition that the said —— —— shall keep the peace and be of good behavior for a period of — days from the date hereof.

Given under my hand, this 16th day of July, 1944.

G. C. Bourne, J. P.

Costs—T. J. Court

Warrant	$1.00
Trial	2.00
Arrest	1.00

In Circuit Court of Middlesex County

[Title omitted].

Appeal from Trial Justice: Misdemeanor: Violation of Section 4097dd of 1942 Code

[Title omitted]

[fol. 26] Appeal from Trial Justice: Misdemeanor: Resisting Arrest

Journal Entry of Hearing—September 25, 1944

This day came the Attorney for the Commonwealth and the accused came to the bar with her counsel, and by consent of both parties these two cases are to be heard on the evidence heard in both cases together and by consent of all

parties trial by jury was waived in both cases, and the defendant agreed to submit her case to the Judge of this Court for trial and disposition according to law, and motion was made by the Attorney for the Commonwealth to amend the warrant as follows: State of Virginia, County of Middlesex, to-wit: To Any Sheriff or Police Officer: Whereas R. P. Kelly, operator of the Greyhound Bus has this day made complaint and information on oath before me, G. C. Bourne, Justice of the Peace of the said County, that Irene Morgan in the said County did on the 16 day of July, 1944, Unlawfully refuse and fail to obey the direction of the driver or operator of the Greyhound Bus Lines to change her seat and to move to the rear of the bus and occupy a seat provided for her, in violation of Section 5 of the Act, Michie Code of 1942, section 4097dd, which motion was granted by the Court and to which ruling the defendant excepted.

After the evidence for the Commonwealth was in, the defendant moved to strike out all the evidence of the Commonwealth and to dismiss the case wherein she was charged of a violation of Section 4097dd of the Code, upon the grounds that the defendant, Irene Morgan, was shown by the evidence for the Commonwealth to be a passenger in the interstate commerce upon an interstate public carrier, towit, the Greyhound Bus, that she was a through passenger from Hayes Store, Gloucester County, Virginia, to Baltimore, Maryland, that Section 4097dd of the Code of Virginia could not constitutionally apply to interstate passengers and that its application to such passengers would violate Article I, Section 8 of the Constitution of the United States, and that said Section 4097dd, should, under settled rules of construction, be construed as inapplicable in operation to passengers in intrastate commerce; and also moved to strike out all the evidence of the Commonwealth and to dismiss the case wherein she was charged with resisting an officer of the law in the discharge of his duty, upon the same grounds previously advanced in support of her motion to strike all the evidence of the Commonwealth and to dismiss the case wherein she was charged with a violation of Section 4097dd of the Code, and upon the additional [fol. 27] grounds that the arrest of her person sought to be made in this case was illegal, and that her conduct was therefore within her privilege to resist an unlawful arrest.

These Motions the Court overruled, to which action of the Court the defendant excepted.

After all the evidence for the Commonwealth and the defendant respectively, was in, and both the Commonwealth and the defendant had rested, defendant renewed her motion to strike out all the evidence for the Commonwealth in each of the cases aforesaid, upon the same grounds respectively, previously advanced in support of the motion to strike made at the conclusion of the Commonwealth's case-in-chief, and upon the additional ground that the conviction of the defendant in either case would constitute a violation of her rights under the Fourteenth Amendment to the Constitution of the United States. These motions the Court overruled, to which action of the Court the defendant excepted.

And the Judge of this Court reserves his decision in each case until October 18th, 1944.

IN CIRCUIT COURT OF MIDDLESEX COUNTY

[Title omitted]

JUDGMENT—October 18, 1944

This day came the Attorney for the Commonwealth and the accused, Irene Morgan came to the bar with her counsels, Spottswood Robinson, III, and Linwood Smith, and the Court having maturely considered of its judgment in this case doth find the defendant Guilty: Thereupon the defendant moved the Court to set aside its findings of facts and grant the defendant a new trial upon the grounds that the said findings of fact were contrary to the law and the evidence and assigned in support of said motion the following reasons:

(1) That the law upon which the prosecution was based could not be constitutionally applied to the defendant, an interstate passenger, and that its application to a passenger in interstate commerce was a violation of Article I, Section 8, of the Constitution of the United States;

[fol. 28] (2) That under settled rules of construction said law could not be construed to apply to a passenger in

interstate commerce, and that it must be construed as limited in its application to intrastate passengers;

(3) That the conviction of the defendant would, under the circumstances of this case, constitute a violation of her rights under the Fourteenth Amendment of the Constitution of the United States; and that (4) said findings of facts were contrary to the evidence, and lacking in evidence sufficient to support them. This motion the Court overruled, to which action of the Court the defendant excepted.

Defendant moved the Court to grant her a new trial, upon the ground that her conviction was erroneous under the law and contrary to the evidence, and assigned as reasons in support of this motion the same reasons previously advanced in support of the motion to set aside the findings of fact and to grant the defendant a new trial. This motion the Court overruled, to which action of the Court the defendant excepted.

Defendant moved the Court to arrest the judgment in this case upon the ground of errors of law and fact apparent upon the face of the record in the case, and assigned as reasons in support of this motion the same reasons previously advanced in support of the motion to set aside the findings of fact and to grant the defendant a new trial. This motion the Court overruled, to which action of the Court the defendant excepted.

The Court having found the said Irene Morgan guilty as charged in said warrant doth sentence the said Irene Morgan to pay a fine to the use of the Commonwealth of Ten Dollars and the costs in this behalf expended.

Whereupon, the defendant indicated to the Court her intention of applying to the Supreme Court of Appeals of Virginia for a writ of error to the judgment of the Court in this case, and moved the Court to grant a suspension of the execution of the judgment entered in this case. Thereupon, the Court granted said motion and granted a suspension of the execution of the judgment for a period of sixty days from date within which period counsel for the defendant might present to the Court bills of exception in said case, and granted to defendant leave to apply to the Court for additional time within which to present to, and have acted upon by, the Supreme Court of Appeals of Virginia, a petition for writ of error to the judgment in this case.

[fol. 29] In Circuit Court of Middlesex County

[Title omitted]

Order Suspending Execution of Judgment—Filed December 7, 1944

This day came the defendent by her counsel and moved the Judge rendering the judgment in this case to further suspend the execution of the judgment and sentence heretofore rendered and imposed in this case on the 18th day of October, 1944, in order to permit the defendant to present a petition for a writ of error to said judgment to the Supreme Court of Appeals of Virginia, and to have the same acted upon by said Court.

Whereupon, it appearing that the defendant has applied to said Judge, who is the Judge of this Court, for the signing and sealing of her several Bills of Exception, the same having been this day signed, sealed, enrolled and saved to her, and made a part of the record in this case, within sixty days of the final judgment in this case, and that the defendant desires and intends to present to the Supreme Court of Appeals of Virginia a petition for a writ of error to the judgment herein. It is hereby adjudged and ordered that execution of the said judgment and sentence be and the same is hereby suspended until the 17th day of February, 1945, and thereafter until such petition is acted upon by the Supreme Court of Appeals of Virginia if such petition is actually filed on or before the 17th day of February, 1945.

In the Circuit Court of Middlesex County

Case 330

Commonwealth of Virginia

v.

Irene Morgan

Appeal from Trial Justice, Violation of Section 4097dd of 1942 Code

[fol. 30] Bill of Exception No. 1—Filed December 7, 1944

Be it remembered that on the trial of this case the following evidence on behalf of the Commonwealth and of the

defendant, respectively, as herginafter denoted, is all of the evidence that was introduced:

Witnesseth for the Commonwealth.

R. P. Kelly.

Direct examination:

R. P. Kelly testified that he lives in Norfolk, Virginia; that he is an employee of the Greyhound Lines, and has been employed by said company for the last six years; that on the 16th day of July, 1944, he was engaged in his duties and was driving, and was in charge and control of, a Greyhound bus from Norfolk, Virginia, to Baltimore, Maryland; that Irené Morgan, the defendant, was a passenger on his bus on July 16, 1944; that the defendant is a colored person; that she boarded the bus at Hayes Store, in Gloucester County, Virginia; that when she boarded the bus at Hayes Store the bus was crowded; that all seats were occupied and both white and colored passengers were standing in the aisle; that after the arrival of the bus in Saluda, at about 11 A. M. on that day, and the discharge of the white and colored passengers destined there, there were six white passengers standing, but no colored passengers standing; that at this time he perceived the defendant and another colored woman, the latter carrying an infant, seated in the second seat forward of the long seat in the extreme rear of the bus, the seat in which they were so seated being, in a view toward the rear of the bus, on the left side of the aisle; that at this time he also saw two vacant seats on the long rear seat, which long rear seat was partly occupied by colored passengers; that he requested the defendant and her seatmate to move back into the two vacant seats on the long rear seat; that the defendant's seatmate started to change her seat, but the defendant pulled her back down into the seat; that the defendant refused to change her seat as requested; that he, the witness, thereupon explained to her the bus rules and regulations as to seating colored and white passengers on busses, and informed her that he was required to seat white pas- [fol. 31] sengers from the front of the bus backward and colored passengers from the rear of the bus forward.

At this point the witness produced a booklet in evidence which he identified as the Manual of Rules for Bus Opera-

tors of the Greyhound Lines, and testified that said Manual contained, on pages 34 and 35 thereof, a rule of said company. Thereupon, the Commonwealth introduced into evidence the booklet containing the rule aforesaid, the same being marked as Exhibit "A", which rule read as follows:

EXHIBIT "A"

"T-22 Rights Reserved: This company reserves the right to refuse transportation to any and all persons for the following reasons:

"(c) This company reserves full control and discretion as to the seating of passengers and the right to change such seating at any time during the trip except on divisions or runs where specific seat reservations are made, in which case, passengers shall retain the seats assigned them unless same be contrary to any laws or governmental regulations."

The witness further testified that to his request that the defendant so move her seat, the defendant replied that she knew the rules and regulations of the bus company and that the front one-half of the bus was for white passengers and the rear one-half of the bus was for colored passengers; that after the defendant refused to change her seat, he left the bus and secured from the Justice of the Peace at Saluda a warrant charging her with violating the Virginia segregation law; that Sheriff R. B. Segar boarded the bus with the warrant and asked the defendant to change her seat and attempted to read the warrant to her, but she knocked the warrant out of the Sheriff's hand; that the woman seated besides the defendant moved, but the defendant refused to move, whereupon the sheriff and his deputy, C. M. Bristow, took her off the bus.

The witness further testified that when the bus arrived in Saluda, after discharging passengers there, there were three colored passengers seated on the long rear seat and two vacant seats thereon; that all other seats on the bus were occupied; that six white passengers, but no colored passengers were standing.

[fol. 32] Cross-examination:

On cross examination R. P. Kelly testified that he had been employed by the Greyhound Lines for six years; that he was the driver of and in charge of the bus upon which

the incidents testified occurred; that he was personally driving and operating the said bus from the City of Norfolk, Virginia, to the City of Baltimore, Maryland; that the said bus made and was making a continuous or through trip from Norfolk to Baltimore, traveling by way of and through the City of Washington, District of Columbia.

He testified further that the Greyhound Lines is regularly engaged in the business of transporting passengers for hire from points within the State of Virginia to various points throughout the United States, including the City of Baltimore, Maryland, and was so engaged on the 16th day of July, 1944; that passengers traveling to points outside the State of Virginia are and were, on the date aforesaid, regularly taken aboard its busses in Gloucester County, Virginia, including Hayes Store, and transported therein to points outside the State of Virginia.

At this point the witness was shown a ticket stub and identification check, and requested to identify the same, whereupon the witness testified that the same was the stub of a ticket issued by the Greyhound Lines on July 15, 1944, at its ticket office at Hayes Store, in Gloucester County, Virginia; that the ticket which had been attached to said stub entitled the holder thereof to transportation in a Greyhound bus from Hayes Store, in Gloucester County, Virginia, to the City of Baltimore, Maryland; that the holder of said ticket was entitled to transportation from Hayes Store, in Gloucester County, Virginia, to the City of Baltimore, Maryland, on the 16th day of July, 1944, in the bus which he drove and operated; that he could not identify the stub as the stub of the ticket which had been surrendered to him by the defendant when she boarded the bus and which he had accepted, but that said stub could be the stub of the ticket of the defendant. Thereupon, the defendant introduced into evidence the stub aforesaid, the same being marked as Exhibit "B", which stub contained the following words, figures and marks on the front side thereof:

[fol. 33] EXHIBIT "B"

A 65748 K

Issued by
Richmond Greyhound Lines, Inc.
Richmond, Va.

In selling this ticket for transportation over the lines of another carrier, the issuing carrier acts as agent only and assumes no responsibility beyond its own line.

Baggage may be checked in accordance with tariff regulations and limitations. Unchecked baggage, parcels, or other effects are carried at passenger's risk.

Void After

L. H. RISTOW,
General Traffic Manager.

Identification Check

Not good for passage or refund

Last Coupon

Reads to Baltimore, Md.

This check should be retained by the passenger until destination is reached subject to inspection by the driver at any time, and is to be surrendered to the driver when the passenger's journey is completed.

Printed in U. S. A.

Exhibit "B", the stub aforesaid, contained the following words, figures and marks on the reverse side thereof:

Greyhound July 15, 1944, Hayes Store, Va.

The witness was then shown a green paper, and requested to identify the same whereupon the witness testified that the same was a transfer or token of the Greyhound Lines; that he recognized the same from the holes punched therein; that after the defendant was arrested and moved from the bus in Saluda, he, the witness, prepared the same in order that the defendant might employ it for transportation from Saluda, Virginia, to Baltimore, Maryland, or for [fol. 34] a cash refund of the fare paid for that portion

of her trip between the said two points; that he punched holes in it at the appropriate places to show Saluda, Virginia, as the point of beginning, and Baltimore, Maryland, as the point of ending, of the incompleted portion of her trip; that he issued the same without the previous knowledge or request of the defendant.

Thereupon, the defendant introduced into evidence the transfer aforesaid, the same being marked as Exhibit "C", which transfer contained no words or figures on the reverse side thereof, but contained the following words, figures and marks on the front side thereof, and also contained three punch marks, one at each of the three places indicated by the figure "X":

EXHIBIT "C".

Richmond Greyhound Lines, Inc.

Form Tr. - 2 NO. 27768

Foreign ( ) R. G. (X)

Valid for Transportation
from or to Stations Punched

Alexandria, Va.	( )	Richmond, Va.	( )
Bays Fork, Va.	( )	Suffolk, Va.	( )
Ft. Belvoir, Va.	( )	T. B. Jct. Md.	( )
Ft. Eustis, Va.	( )	Tappahan'k, Va.	( )
Fredericksburg, Va.	( )	Triangle, Va.	( )
La Plata, Md.	( )	Waldorf, Md.	( )
Lee Hall, Va.	( )	Warsaw, Va.	( )
Newport News, Va.	( )	Washington, D. C.	( )
Norfolk, Va.	( )	Williamsburg, Va.	( )
Petersburg, Va.	( )	Balto, Md.	(X)
Portsmouth, Va.	( )	Saluda, Va.	(X)

Subject to Tariff Limitations of
Ticket for which Transfer is Issued

The witness further testified that he would not have prepared or issued a transfer showing Saluda, Virginia, [fol. 35] as the point of beginning and Baltimore, Maryland, as the point of ending, unless the defendant had held a ticket entitling her to transportation on his bus to Balti-

more, Maryland; that defendant held a ticket entitling her to transportation to Baltimore, Maryland; that he knew that all of the colored passengers remaining on the bus in Saluda, after those destined to Saluda had been discharged, from the bus in Saluda, held tickets to and were traveling to Baltimore, Maryland, and that defendant held a ticket to and was traveling to Baltimore, Maryland.

The witness testified further that the bus arrived in Saluda at about 11 A. M.; that after its arrival there, and after the passengers destined to Saluda had left the bus, there were three colored passengers seated on the long seat in the extreme rear of the bus; that there were two vacant seats on the said rear seat; that said long rear seat is designed to accommodate a maximum of five passengers; that the defendant and the other colored woman sitting beside her occupied the seat second forward of the long rear seat on the left side of the aisle; that all other seats in the bus, except the two vacant on the long rear seat, were occupied; that all colored passengers were seated; and that six white passengers were standing.

He testified further that he told the defendant and her seatmate to move from the seat they then occupied into the long rear seat; that he told them that under the rules of the bus company they would have to sit in the long rear seat, and attempted to explain to her the rules and regulations of the bus company; whereupon the defendant said that she knew as much about the bus rules as he did; that he also told them that he was required to seat colored passengers from the rear of the bus forward, and white passengers from the front of the bus backward; that under the rules of the bus company all colored passengers were required to be seated from the rear of the bus forward, and that all white passengers were required to be seated from the front of the bus backward, and that the general custom and policy pursued by his company upon busses traveling in or through the State of Virginia was to assign separate seats to white and colored passengers in the manner stated. He testified further that he never made an effort to move any other passenger or passengers on the bus except the defendant and her seatmate; that he never did anything more than request that they move to the two vacant seats [fol. 36] on the long rear seat, and that his direction in this regard was made solely to the defendant and her seatmate; that neither he nor anyone else on the bus had any

difficulties whatsoever with the defendant until he sought to procure her removal from the seat that she occupied.

At this point Estelle Fields was presented before the witness, and the witness was requested to look at her and identify her. The witness then stated that he could not identify this person, and that he did not remember whether she was the person who was seated beside the defendant or not.

The witness denied that he was seeking the removal of the defendant and her seatmate in order to obtain seats for a white couple which boarded the bus in Saluda; he denied that he at any time stated that colored passengers would be seated only after all white passengers were seated; he testified that after the defendant refused to change her seat, he left the bus and swore out the warrant for her arrest upon the charge of refusing to move her seat.

C. M. Bristow.

Direct examination:

C. M. Bristow testified that he is deputy sheriff of Middlesex County; that he accompanied Sheriff R. B. Segar to the Greyhound bus on July 16, '944, at about 11 o'clock A. M., to execute the warrant sworn out against defendant by the bus driver; that when they boarded the bus no colored passengers were standing; that white passengers were standing; that he saw the defendant and another colored woman seated in the second seat forward from the long rear seat; that there were two vacant seats on the long rear seat; that when Sheriff R. B. Segar was reading the warrant of arrest to the defendant, she snatched the warrant out of his hand and threw it behind her seat; that the sheriff requested the defendant and her seatmate to move from the seat they occupied; that the defendant's seatmate got up and took one of the vacant seats on the long rear seat; that the defendant refused to move from the seat; that when they tried to arrest the defendant and take her off the bus, the defendant struck at the witness, but did not hit him, and kicked Sheriff Mr. Segar three times on his leg; that the defendant stated that she would neither move her seat nor get off the bus; that he and the [fol. 37] sheriff took the defendant from the bus and put her in the jail at Saluda; that R. P. Kelly, the driver and

operator of the bus, had obtained the issuance of the warrant, and had pointed the defendant out to the sheriff and him.

Cross-examination:

On cross examination C. M. Bristow testified that he is the deputy sheriff of Middlesex County, Virginia; that he has considerable experience in arresting persons charged with crime; that he had assisted Sheriff Segar on nearly every arrest made during the time he has been deputy sheriff; that the defendant was seated on the second seat forward of the long rear seat in the rear of the bus; that there were two vacant seat spaces on the long rear seat; that the long rear seat was partly occupied by colored passengers; that several white passengers were standing in the aisle; that the defendant was in all respects orderly and well-behaved and caused no trouble whatsoever until efforts were commenced to remove her from the seat she occupied.

At this point Estelle Fields was presented before the witness, and the witness was requested to look at her and identify her. The witness then stated that he could not identify this person, and that — did not remember whether she was the person who was seated beside the defendant or not.

R. B. Segar.

Direct examination.

R. B. Segar testified that he is the Sheriff of Middlesex County, Virginia, and has been sheriff of the County for forty years; that on July 16, 1944, at about 11 o'clock A. M., when the Greyhound bus operated by R. P. Kelly stopped in Saluda, Virginia, Kelly swore out and obtained a warrant for the arrest of the defendant for refusing to change her seat as required by Virginia law; that he, accompanied by C. M. Bristow, his deputy, went on the bus to execute the warrant; that when he attempted to read the warrant to the defendant, she snatched it from his hand and threw it behind her seat; that he requested the defendant and her seatmate to move; that the defendant refused to so move, and kicked him twice on his leg; that the colored woman seated beside the defendant got up out

[fol. 38] of the seat when he requested her to move; that the defendant stated that she would not move her seat, and that she would not get off the bus; that he and C. M. Bristow took the defendant from the bus and put her in jail in Saluda; that his (the witness') back was to the rear of the bus, and that he could not see whether there were any vacant seats in the rear of the bus or not; that when he so boarded the bus his badge as Sheriff of Middlesex County, was pinned on his shirt, and that he wore no coat.

Cross-examination:

On cross examination *Sheriff R. B. Segar testified* that he had had considerable experience in arresting persons charged with crime; that he did not know whether there were any vacant seats on the long rear seat or not, but that he entered the bus to execute the warrant of arrest; that he did not look any further to the rear of the bus than the seat which the defendant and her seatmate occupied; and was not in a position to say if there were any vacant seats on the bus; that he thought that the defendant and her seatmate sat in the third seat forward of the long rear seat, rather than in the second seat forward of the long rear seat; that the defendant was sitting quietly in the seat when he boarded the bus and approached her, and that so far as he knew she was well-behaved and caused no trouble whatsoever until he attempted to read the warrant of arrest to her and move her out of her seat; that the warrant was procured and sworn out by the bus driver.

At this point Estelle Fields was presented before the witness, and the witness was requested to look at her and identify her. The witness then stated that he could not identify this person, and that he did not think she was the person who was seated beside the defendant or not.

Upon this testimony the Commonwealth rested its case.

Thereupon the defendant moved the Court to strike out all the evidence of the Commonwealth, and to dismiss the case wherein she was charged with a violation of Section 4097dd of the Code of Virginia, as fully set forth in Bill of Exception No. 2, to which reference is hereby made; *to which reference is hereby made,* and upon the grounds

and for the reasons therein set forth. This motion the Court overruled, to which action of the Court the defend- [fol. 39] ant excepted, and thereupon offered the following evidence in her behalf.

Evidence for the Defendant.

Irene Morgan.

Direct examination:

Irene Morgan testified that she is the defendant in this case; that she is a Negro or colored person; that she resides both in Gloucester County, Virginia, and in Baltimore, Maryland; that on the 15th day of July, 1944, she purchased from the regular agent of the Greyhound Lines a through ticket for transportation from Hayes Store, in Gloucester County, Virginia, to the City of Baltimore, Maryland; that on the 16th day of July, 1944, she boarded a Greyhound bus, which was operated and driven by R. P. Kelly, at Hayes Store, and surrendered her ticket to him, for transportation to Baltimore; that her ticket was accepted by the bus driver; that she had no intention of leaving the bus prior to its arrival in Baltimore.

At this point the defendant was presented with the ticket stub and identification check, marked as Exhibit "B", and set forth hereinbefore in this Bill of Exception, whereupon she testified that the same was the stub of the ticket which she had purchased on July 15, 1944, and which she had surrendered to the operator of the bus. The defendant was then presented with the green paper previously identified by the witness R. P. Kelly as the transfer or token which he issued, marked as Exhibit "C", and set forth hereinbefore in this Bill of Exception, whereupon the defendant testified that said paper was issued to her and given to her by the said R. P. Kelly after she, the defendant, had been removed from the bus in Saluda.

The defendant further testified that at the time she boarded the bus at Hayes Store, there were four or five colored persons already seated on the long seat in the extreme rear of the bus, that the seats on each side of the aisle immediately forward of the long rear seat were occupied by colored persons; that the seats second forward of the long rear seat were occupied by two colored persons

seated on the right side of the aisle (in a view from front to rear of the bus) and by two white passengers seated on the left side of the aisle; that the seat third forward of the long rear seat were occupied by two colored persons on the right side of the aisle and by a white woman and [fol. 40] a white child on the left side of the aisle; that she, the defendant took a seat on the long rear seat, and that a colored man, who also boarded the bus at Hayes Store, also took a seat on the long rear seat, thus making a total of six or seven passengers occupying the long rear seat; that numerous persons, both white and colored, were standing in the aisle.

The defendant testified further that between Hayes Store and Saluda, the two colored passengers occupying the seat second forward from the long rear seat on the right side of the aisle got off the bus, whereupon two white passengers occupied said seat; that the bus arrived in Saluda about 11 o'clock A. M.; that at the time the bus arrived there, colored persons occupied the long rear seat, there being about six or seven in all occupying that seat, the seats immediately forward of the long rear seat on each side of the aisle and the seat third forward of the long rear seat on the right side of the aisle, while white passengers occupied all of the remaining seats in the bus, including the seats on each side of the aisle second forward from the long rear seat, and the seat third forward of the long rear seat on the left side of the aisle; that upon arrival in Saluda, the white woman and the white child who previously occupied the seat third forward on the left side of the aisle left the bus; that she, the defendant, thereupon moved into said seat, occupying the half of said seat next to the window; that a colored woman, who was, as the defendant later learned, Estelle Fields, and who was carrying an infant in her arms, boarded the bus and took the vacant seat beside the defendant.

At this point Estelle Fields was presented before the defendant, and the defendant was requested to look at her and identify her. The defendant then stated that the said Estelle Fields was the person who carried the infant and who took the seat beside the defendant.

The defendant further testified that there were still a large number of persons of each race standing in the aisle; that after she and Estelle Fields had sat in the said seat for about five minutes, a white woman accom-

panied by a white man boarded the bus, which was still standing in Saluda, that thereupon the bus driver approached the defendant and Estelle Fields, and told them that they must get up so that the white couple might sit down; that she, the defendant thereupon informed the driv [fol. 41] er that she was willing to change her seat to another seat in the bus, but that she was unwilling to stand for the remainder of her trip; that she also told the bus driver that it was her understanding of the laws of Virginia that colored persons were entitled to occupy the seats from the center of the bus to the rear, and that white passengers were entitled to occupy the seats from the center of the bus to the front; that in reply the bus driver announced that colored persons would be seated only after all white persons had obtained seats; that when asked by the defendant where she, the defendant, would sit if she relinquished the seat in which she was sitting, the bus driver said nothing; that at the time she was told to move, there were no vacant seats in the bus; that at no time did the bus driver offer her another seat, or attempt to move another passenger or passengers in order that seat space for her might be procured, or ask any person or persons on said bus except the defendant and Estelle Fields, to move from or relinquish their seats; that the bus driver never said anything to her concerning the requirements of the laws of Virginia, but she did say to the bus driver that she knew as much about the rules of the bus company as he did; that at no time did she, the defendant, pull Estelle Fields back into the seat or in any way interfere with her movements or otherwise attempt to prevent her from leaving the seat.

The defendant testified further that the bus driver then left the bus, and returned later with the sheriff and the deputy sheriff; that she did not know who the persons accompanying the bus driver were; that she never saw any badge or other indication of official authority upon either; that the sheriff approached her with a sheet of paper in his hand, the purport of which she did not know; that the sheriff merely stated: "I have a warrant"; that she, the defendant, thereupon inquired: "A warrant for whom?" and asked for what the warrant was issued; that the sheriff said nothing and immediately put the paper into his pocket; that she did not, as stated by witnesses for the Commonwealth snatch the paper from his hand, or throw

it behind the seat, or in any way touch the paper or interfere with the sheriff's possession thereof; that after placing the paper in his pocket, the sheriff asked her whether she would move out of the seat; that she thereupon told him that she was willing to exchange her seat for another seat on the bus, but that she was not willing to stand; that without more, she was seized by the arms by the sheriff and his deputy and forcibly taken from the bus; that she [fol. 42] did hold on the seat in an effort to maintain her position therein, but at no time did she kick the sheriff or strike at the deputy sheriff or attempt in any manner to inflict bodily harm or injury upon either; that injury was inflicted to her arms and shoulders from the rude manner in which she was removed from the bus; but that aside from this there was no further violence and no further words between the parties; that she was placed in the jail in Salula and kept there from about 11:30 A. M. until about 5:00 or 6:00 P. M. on July 16th, 1944, when she was released on bail fixed in the sum of $500.00.

Cross-examination:

On cross examination the defendant testified that there were no vacant seats on the long rear seat, or elsewhere in the bus when the bus driver and sheriff respectively, asked her to move; that there were a large number of persons, both white and colored, standing in the aisle at that time; that she told the bus driver, and also the sheriff, when they, respectively, told her to relinquish her seat, that she would move to any other seat in the bus; but would not stand; that she told the bus driver that she thought that under the laws of Virginia the space in the bus from the center to the rear thereof was for occupancy by colored passengers, and that from the center to the front thereof was for occupancy by white passengers; that the bus driver did not at any time *said* anything to her concerning the requirements of the laws of Virginia, that rather the bus driver stated that colored passengers would not be seated until all white passengers had been seated; that she, the defendant, did not pull Estelle Fields back into the seat as testified to by the bus driver; that she did not snatch, or try to snatch, the warrant from the sheriff; or throw the same behind the seat; that she did not kick the sheriff; that she did not strike at the deputy sheriff.

Estelle Fields.

Direct examination:

Estelle Fields testified that she is a native of Middlesex County, Virginia, but that she now resides in Philadelphia, Pennsylvania; that on the 16th day of July, 1944, she boarded a Greyhound bus in Saluda, Virginia, en route to [fol. 43] Philadelphia at about 11:00 o'clock A. M.; that this was the same bus upon which the defendant, Irene Morgan, was riding; that she did not know Irene Morgan at that time; that on this day and at this time she was carrying an infant in her arms; that when she boarded the bus there was only one seat vacant therein; that that seat was the seat beside the defendant and was the half of the seat next to the aisle on the left-hand side of the aisle looking to the rear of the bus; that there were no vacant seats on the long rear seat, or elsewhere in the bus; that a large number of persons of both races were standing in the aisle; that she sat into the seat beside the defendant, and held the infant in her lap; that the bus driver then came back towards them; that there were no available seats in the bus at this time; that the bus driver stated that no colored passengers would be seated until all white passengers had been seated; that the seat immediately behind the seat occupied by the defendant and the witness were occupied by two white passengers, but that notwithstanding this fact the driver made no effort to shift the defendant and her to another seat in the bus; that neither she nor the defendant moved pursuant to the demand of the bus driver; that she, the witness made no effort to move; that the defendant at no time pulled her back into the seat, or attempted to keep her from moving therefrom; that the driver left the bus and returned later with the sheriff and his deputy; that the deputy sheriff came up and told them to move from the seat; that she, the witness, then got out of the seat, but had to stand in the aisle, as there was no other vacant seat in the bus; that she did not hear the sheriff say that he had a warrant; that she never saw a warrant; that the sheriff never read a warrant to the defendant; that so far as she, the witness, knew, the defendant did not snatch a warrant from the sheriff; that she, the witness did not see the defendant kick the sheriff, or strike at the deputy or use violence against either; that the sheriff demanded that the defend-

ant relinquish her seat; that the defendant stated that she was willing to exchange the seat she then occupied for any other seat in the bus, but that she, the defendant, was unwilling to stand; that after the defendant refused to move from the seat, the sheriff and the deputy sheriff seized the defendant and pulled her from the seat and took her off the bus; that the defendant tried to keep her seat, and held on to the seat when they tried to remove her, but that she, the defendant, did not strike at the officers, or either of them, or subject either to violence; that [fol. 44] she, the witness, continued the trip standing; that a passenger offered to hold the baby and did hold the baby until she, the witness, was able some time later to obtain a seat.

Cross-examination:

On cross examination Estelle Fields testified that there never were any vacant seats on the long rear seat; that the only vacant seat she saw anywhere in the bus when the bus was standing in Saluda was the seat beside the defendant, which she, the witness took; that she got out of the seat when the sheriff asked her to move, but that she was not able to find a seat and so had to stand; that she did not move when the bus driver came back because she was not sure whether the bus driver was speaking to her; that she did not see the defendant kick the sheriff, or strike at his deputy, or either; that she did not see the defendant snatch the warrant from the sheriff; that she did not see a warrant; that the defendant tried to keep her seat when the sheriff and deputy took her out of the seat, but that the defendant did not strike at either.

Richard Scott.

Direct examination:

Richard Scott testified that on the 16th day of July, 1944, he boarded a Greyhound bus in Norfolk, Virginia, and traveled thereon to Saluda, Virginia; that this was the same bus on which the defendant rode; that the defendant boarded the bus at Hayes Store, Virginia; that when the bus arrived in Saluda, the defendant sat in the third seat forward of the long rear seat on the left side of the aisle; that when she so sat there this seat was the

only vacant seat on the bus; that at this time there was no vacant seat on the long rear seat; that he, the witness, and Willie Robinson were sitting on the long rear seat when the bus arrived at Saluda; that there were six or seven persons seated on the long rear seat between Hayes Store and Saluda; that he, the witness, and Willie Robinson left the bus at Saluda; that when they got up out of their places on the long rear seat, other passengers in the bus, who were then standing, immediately sat in the seats thereon which they vacated; that when they left the bus there were numerous persons both white and colored, standing in the aisle; that he did not see the bus driver try to [fol. 45] move the defendant; that he did not see the sheriff or the deputy sheriff, that he left the bus before any further events occurred.

Cross examination:

On cross examination Richard Scott testified that he and Willie Robinson left the bus when the same stopped in Saluda, and that consequently he saw none of the incidents occurring between the bus driver and the defendant, or the sheriff *of* deputy sheriff and the defendant.

Willie Robinson.

Direct examination:

Willie Robinson testified that on the 16th day of July, 1944, he got on a Greyhound bus in Norfolk, Virginia; that he traveled on said bus to Saluda, Virginia; that this was the same bus on which the defendant rode; that the defendant got on the bus at Hayes Store, Virginia; that he and Richard Scott were seated on the long rear seat; that there were about six or seven persons seated on the long rear seat when the bus arrived in Saluda; that upon arrival in Saluda, the defendant moved into the third seat forward of the long rear seat on the left side of the aisle; that when she so moved the seat into which she moved was the only vacant seat in the bus; that he and Richard Scott left the bus in Saluda; that when they got up from the long rear seat standing passengers immediately sat in the seats thereon which they so vacated; that when they left the bus there were a number of persons of each race standing in the aisle; that he saw none of the events

occurring with respect to efforts to move the defendant from the seat, he having left the bus before they took place.

William Garnett.

Direct examination:

William Garnett testified that on the 16th day of July, 1944, he took his sister, who was traveling to Pennsylvania, to the bus at Saluda; that he went aboard the bus with his sister's bags and placed the bags in the bus for her; that the bus which he so entered was standing in the bus depot in Saluda at about 11 o'clock A. M. on this day, that the bus was crowded, with both white and colored passengers standing in the aisle; that he looked about the bus in an [fol. 46] effort to find his sister a seat, but that all seats in the bus were occupied; that he left the bus; that when he so left the bus his sister was still standing.

Thomas Carter.

Direct examination:

Thomas Carter testified that on the 16th day of July, 1944, he was in Saluda, Virginia, at the Greyhound bus depot at about 11 o'clock A. M.; that the bus depot is across the street from the jail; that about this time he saw the sheriff and the deputy sheriff bringing the defendant from the bus to the jail; that the defendant was then peaceably accompanying the sheriff and deputy, and was offering no resistance to either, but that she was then being handled roughly and rudely by the sheriff and the deputy.

Rachel Goldman.

Direct examination:

Rachel Goldman testified that she resides in Gloucester County, Virginia; that she knew the defendant, Irene Morgan; that she had known the defendant practically all of her life; that she, the witness, had resided in Gloucester County, Virginia, and also in Baltimore, Maryland; that she knew the defendant both in Gloucester and in Baltimore; that during the time she had known the defendant she, the witness, had heard the defendant's character and reputation for peace and good order, and for truth and veracity,

discussed by the members of each community and knew what her community reputation is in each respect; that her community reputation for peace and good order is good both in Gloucester County and in Baltimore; that the defendant's community reputation in each place for truth and veracity is good; that during the time she had known the defendant she had never heard anything said which detrimentally affected her community reputation in either respect.

Ruby Catlett.

Direct examination:

Ruby Catlett testified that she resides in Gloucester County, Virginia; that she knew the defendant, Irene Morgan; that she had known the defendant for a long time; that she, the witness, had resided both in Gloucester County and [fol. 47] Baltimore, Maryland; that she knew the defendant both in Baltimore and in Gloucester County; that during the time she had so known the defendant, she, the witness, had heard the defendant's character and reputation for peace and good order, and for truth and veracity discussed by members of each community and knew what her community reputation is in each respect; that her community reputation in each place for peace and good order is good; that her community reputation in each place for truth and veracity is good; that during the time she had so known the defendant she had never heard anything said which detrimentally affected her character in either respect.

Upon this testimony the defendant rested her case.

The Commonwealth thereupon rested its case.

The defendant then renewed her motion that the Court strike out all of the evidence of the Commonwealth, and dismiss the case wherein she was charged with a violation of Section of 4097dd of the Code of Virginia, as fully set forth in Bill of Exception No. 2, to which reference is hereby made, and upon the grounds and for the reasons therein set forth. This motion the Court overruled, to which action of the Court the defendant excepted.

Each and every witness testifying in the case, as aforesaid, was first sworn according to law.

And the defendant tendered this her Bill of Exception No. 1 on the 27th day of November, 1944, and prayed that the same be signed, sealed and enrolled as a part of the

record in this case, which is accordingly done this 7th day of December, 1944.

J. Douglas Mitchell, Judge of the Circuit Court of Middlesex County. (Seal.)

[File endorsement omitted.]

IN THE CIRCUIT COURT OF MIDDLESEX COUNTY

COMMONWEALTH OF VIRGINIA

v.

IRENE MORGAN

[fol. 48] BILL OF EXCEPTION No. 2—Filed December 7, 1944

Be it remembered that on the trial of this case when the Commonwealth had completed its presentation of its evidence-in-chief and had rested, the defendant moved to strike all of the evidence of the Commonwealth and to dismiss the case upon the grounds that the evidence introduced by the Commonwealth was legally insufficient to sustain a conviction of the crime charged in the amended warrant, upon which she was being tried, and that no judgment thereupon could lawfully be rendered against her, for the following reasons, towit: that the law upon which the prosecution was based could not constitutionally be applied to the defendant who was, as shown by the evidence of the Commonwealth, an interstate passenger, traveling upon the vehicle of an interstate public carrier, and that its application to such a passenger would be in violation of Article I, Section 8, of the Constitution of the United States; and that under settled rules of construction said law could not be construed to apply to a passenger in interstate commerce, and that it must be construed as limited in its operation to passengers in intrastate commerce.

The Court overruled said motion, to which action of the Court the defendant thereupon excepted.

At the conclusion of the case when both the Commonwealth and the defendant had rested, the defendant renewed her motion to strike all evidence of the Commonwealth, and to dismiss the case, upon the ground that the evidence introduced by the Commonwealth was legally insufficient to sus-

tain a conviction of the crime charged in the amended warrant, upon which she was being tried, and that no judgment thereupon could lawfully be rendered against her, for the following reasons, to-wit: that the law upon which the prosecution was based could not constitutionally be applied to the defendant who was, as shown by the evidence both for the Commonwealth and the defendant, an interstate passenger, traveling upon the vehicle of an interstate public carrier, and that its application to such a passenger would be in violation of Article I, Section 8, of the Constitution of the United States; that under settled rules of construction said law could not be construed to apply to a passenger in interstate commerce, and that it must be construed as limited in its operation to passengers in intrastate commerce; and that the conviction of the defendant would, under the circumstances of this case, constitute a violation of her rights under the Fourteenth Amendment of the Constitution of [fol. 49] the United States. The Court overruled said motion, to which action of the Court the defendant thereupon excepted, and tendered this her Bill of Exception No. 2 on the 27th day of November, 1944, and prayed that the same be signed, sealed and enrolled as a part of the record in this case, which is accordingly done this 7th day of December, 1944.

J. Douglas Mitchell, Judge of the Circuit Court of Middlesex County. (Seal.)

[File endorsement omitted.]

IN THE CIRCUIT COURT OF MIDDLESEX COUNTY

COMMONWEALTH OF VIRGINIA

v.

IRENE MORGAN

BILL OF EXCEPTION NO. 3—Filed December 7, 1944

Be it remembered that on the trial of this case the Commonwealth and the defendant, to sustain their several issues, introduced several witnesses who testified as fully set forth in the statement of testimony certified by the Honorable J. Douglas Mitchell, Judge of the Circuit Court of Middlesex County, Virginia, who presided at the trial

(said certificate and statement of testimony being contained and set forth at length in defendant's Bill of Exception No. 1, and asked to be read as if here inserted), and which evidence was presented to the Court, trial by jury having been waived, and after hearing the same and at the conclusion thereof, the Court decided that the defendant was guilty of the charge set forth in the amended warrant upon which she was tried, to wit: "That the defendant did unlawfully refuse and fail to obey the direction of the driver or operator of the Greyhound Bus Lines to change her seat and move to the rear of the bus and occupy a seat provided for her, in violation of section 5 of the Act, Michie Code of 1942, section 4097dd."

Whereupon the defendant moved the Court that said judgment be set aside and a new trial be awarded the defendant, and that the Court arrest judgment therein and not pronounce the same, on the grounds that no judgment could lawfully be rendered against her in this case, for [fol. 50] the following reasons, to-wit: that the law upon which the prosecution was based could not constitutionally be applied to the defendant, an interstate passenger, traveling upon the vehicle of an interstate public carrier, and that its application to such a passenger was in violation of Article I, Section 8, of the Constitution of the United States; that under settled rules of construction said law could not be construed to apply to a passenger in interstate commerce, and that it must and should be construed as limited in its operation to passengers in intrastate commerce; that the conviction of the defendant would, under the circumstances of this case, constitute a violation of her rights under the Fourteenth Amendment of the Constitution of the United States; and that said finding and verdict were contrary to the evidence, and lacking in evidence sufficient to support the same.

The Court overruled said motion, to which ruling and action of the Court the defendant thereupon excepted, and tendered this her Bill of Exception No. 3 on the 27th day of November, 1944, and prayed that the same be signed, sealed and enrolled as a part of the record in this case, which is accordingly done this 7th day of December, 1944.

J. Douglas Mitchell, Judge of the Circuit Court of Middlesex County. (Seal.)

[File endorsement omitted.]

IN THE CIRCUIT COURT OF MIDDLESEX COUNTY

COMMONWEALTH OF VIRGINIA

v.

IRENE MORGAN

BILL OF EXCEPTION NO. 4—Filed December 7, 1944

Be it remembered that on the trial of this case the Commonwealth and the defendant, to sustain their several issues, introduced several witnesses who testified as fully set forth in the statement of testimony certified by the Honorable J. Douglas Mitchell, Judge of the Circuit Court of Middlesex County, Virginia, who presided at the trial (said certificate and statement of testimony being contained and set forth at length in the defendant's Bill of Excep- [fol. 51] tion No. 1, and asked to be read as if here inserted), and which evidence was presented to the Court, trial by jury having been waived, and after hearing the same and at the conclusion thereof, the Court decided that the defendant was guilty of the charge set forth in the amended warrant upon which she was tried, to-wit: that the defendant did "Unlawfully refuse and fail to obey the direction of the driver or operator of the Greyhound Bus Lines to change her seat and move to the rear of the bus and occupy a seat provided for her, in violation of section 5 of the Act, Michie Code of 1942, section 4097dd."

Whereupon, and after the Court had overruled the defendant's motion to set aside said judgment, as set forth in detail in defendant's Bill of Exception No. 3, and asked to be read as if here inserted, the defendant moved the Court to award her a new trial, and that the Court arrest judgment therein and not pronounce the same, upon the same grounds and for the same reasons assigned in support of her prior motion to set aside the said judgment, as set forth at length in defendant's Bill of Exception No. 3, to which reference is hereby made for the grounds and reasons assigned in support of this her motion for a new trial, and asked to be read as if here inserted.

The Court overruled said motion, to which ruling and action of the Court the defendant thereupon excepted, and tendered this her Bill of Exception No. 4 on the 27th day of November, 1944, and prayed, that the same be

signed, sealed and enrolled as a part of the record in this case, which is accordingly done this 7th day of December, 1944.

J. Douglas Mitchell, Judge of the Circuit Court of Middlesex County. (Seal.)

[File endorsement omitted.]

CLERK'S CERTIFICATE

VIRGINIA:

IN THE CLERK'S OFFICE OF THE CIRCUIT COURT OF THE COUNTY OF MIDDLESEX, JANUARY 10, 1945

I, C. W. Eastman, Clerk of the Circuit Court of the County of Middlesex, Virginia, do hereby certify that the foregoing is a true, accurate and complete transcript of the record in the case of Commonwealth of Virginia, Plain-
[fol. 52] tiff, *versus* Irene Morgan, Defendant, as appears on file and of record in my office aforesaid and which I, as Clerk of said Court, have been requested by counsel for said defendant to copy for the purpose of its presentation, along with a petition for a writ of error to the judgment in said case, to the Supreme Court of Appeals of Virginia.

And I further certify that it affirmatively appears from the papers filed in said case the Honorable Lewis Jones, Commonwealth's Attorney for the County of Middlesex, Virginia, who was counsel of record for said plaintiff, had due written notice of the intention of said defendant to apply for the foregoing transcript of record and of the time and place at which such application would be made, and, further, that such counsel had due written notice of the time and place at which the foregoing bills of exception would be presented to the Honorable J. Douglas Mitchell, Judge of the Circuit Court of the County of Middlesex, Virginia, to be signed, sealed, and enrolled as and made a part of the record in this case.

Given under my hand and seal of said Court this 10th day of January, 1945.

C. W. Eastman, Clerk of the Circuit Court of Middlesex County, Virginia. (Seal.)

VIRGINIA:

IN THE CIRCUIT COURT OF MIDDLESEX COUNTY

Case 331. File 40

COMMONWEALTH

v.

IRENE MORGAN

Resisting Arrest

JUDGMENT—October 18, 1944

This day came the Attorney for the Commonwealth and the accused, Irene Morgan came to the bar with her counsel, Spottswood Robinson III, and Linwood Smith, and the Court having maturely considered of its judgment in this case doth find the defendant Guilty; thereupon the defendant moved the Court to set aside its findings of fact and grant the defendant a new trial, upon the ground that said findings of fact were contrary to the law and the evidence, and assigned as reasons in support of said motion the same reasons previously advanced in support of the motion to set aside the findings of fact and to grant the [fol. 53] defendant a new trial in the case wherein she was adjudged guilty of a violation of Section 4097dd of the code, and the additional reason that the arrest of her person sought to be made in this case was illegal, and that her conduct was therefore within her privilege to resist an unlawful arrest. This motion the Court overruled, to which action of the Court the defendant excepted. Defendant moved the Court to grant her a new trial, upon the ground that her conviction was erroneous under the law and contrary to the evidence, and assigned as reasons in support of this motion the same reasons previously advanced in support of her motion to set aside the findings of fact and to grant the defendant a new trial in the case wherein she was adjudged guilty of Violating Section 4097dd, and the additional reason previously advanced in support of her motion to set aside the findings of fact and to grant her a new trial in this case. This motion the Court overruled, to which action of the Court the defendant excepted.

The Court doth sentence the said Irene Morgan to pay a

fine to the use of the Commonwealth of One Hundred Dollars, and the costs in this behalf expended, the said fine and costs to be paid within thirty (30) days from the rising of this Court. It is further ordered that the said Irene Morgan enter into a bond before the Clerk of this Court on or before October 19th, 1944, with sufficient security in the sum of Five Hundred Dollars for her appearance on the 1st day of November Term, to-wit: November 27th, 1944, and the said Irene Morgan was recognized in the sum of Fifty Dollars for her appearance in this Court on the 19th day of October, 1944.

Defendant moved the Court to arrest the judgment in this case upon the grounds of errors of law and fact apparent upon the face of the record in the case, and assigned as reasons in support of this motion the same reason previously advanced in sup-ort of her motion to set aside the findings of fact and to grant the defendant a new trial in the case wherein she was adjudged guilty of violating Section 4097dd, and the additional reason previously assigned in support of her motion to set aside the findings of fact and to grant her a new trial in this case. This motion was overruled, to which action of the Court the defendant excepted.

VIRGINIA:

IN THE CIRCUIT COURT OF MIDDLESEX COUNTY

The foregoing order entered on the 18th day of October, [fol. 54] 1944, in the Criminal Case Numbered 331 on the Docket of this Court, in the Style of

IRENE MORGAN

v.

COMMONWEALTH

Appeal from Trial Justice: Misdemeanor. Resisting Arrest

is attached hereto with the consent of all parties to show the disposition of this case, as it was tried with the consent of all parties along with and upon the same evidence heard

in the Criminal Case Numbered 330 on the Docket of this Court in the Style of

IRENE MORGAN

v.

COMMONWEALTH

Appeal from Trial Justice: Misdemeanor. Violation of Section 4097dd of 1942 Code.

on which the defendant has indicated her desire and intention to present to the Supreme Court of Appeals of Virginia a petition for a writ of error to the judgment herein. The case Numbered 331 Resisting Arrest being off the Criminal Docket of the Court as the fine and costs have been paid.

January 10th, 1945.

Teste:

C. W. Eastman, Clerk of the Circuit Court of the County of Middlesex.

A Copy—Teste:

M. B. Watts, C. C.

[fol. 55] IN SUPREME COURT OF APPEALS OF VIRGINIA

Record No. 2974

Present: All the Justices.

IRENE MORGAN

v.

COMMONWEALTH OF VIRGINIA

From the Circuit Court of the County of Middlesex
J. Douglas Mitchell, Judge

OPINION BY JUSTICE HERBERT B. GREGORY—June 6, 1945

The plaintiff in error was found guilty of a violation of section 4097dd of the Virginia Code (Michie), Acts 1930, p. 344, and fined $10 and costs. She attacks the judgment of the lower court upon the ground that the statute does

not apply to her because she was an interstate passenger on an interstate bus and, if it does, it is unconstitutional.

The facts, briefly, are as follows: On July 16, 1944, the plaintiff in error, who will be hereinafter referred to as the defendant, was a passenger upon a bus of the Richmond Greyhound Lines, Inc. She was a member of the Negro race, and had purchased a ticket at Hayes Store, in Gloucester county, Virginia, to Baltimore, Maryland. The bus on which she was riding was operated from Norfolk, Virginia, to Baltimore, Maryland. Upon arriving at Saluda, Middlesex county, Virginia, she was sitting in the second seat toward the front from the long seat in the extreme rear of the bus. There were two vacant spaces upon the long rear [fol. 56] seat, and six white passengers were standing. The bus driver requested the defendant and her seatmate, another woman of the Negro race, to change their seats and occupy the two vacant spaces on the rear seat. The seatmate attempted to make the exchange but as she sought to arise she was pulled back by the defendant. The defendant refused to change her seat as requested. The bus driver explained to her the rules and regulations of the company as to seating colored and white passengers on buses, and informed her that he was required to seat white passengers from the front of the bus toward the rear and colored passengers from the rear of the bus forward.

Exhibit "A" sets forth the regulation of the company. It is in this language:

"T-22 Rights Reserved: This company reserves the right to refuse transportation to any and all persons for the following reasons:

"(c) This company reserves full control and discretion as to the seating of passengers and the right to change such seating at any time during the trip except on divisions or runs where specific seat reservations are made, in which case, passengers shall retain the seats assigned them unless [fol. 57] same be contrary to any laws or governmental regulations."

Upon the refusal of the defendant to change her seat the driver of the bus caused a warrant to be sworn out for her. The sheriff and a deputy boarded the bus with the warrant and requested the defendant to change her seat. The sheriff attempted to read the warrant to her but she snatched it

out of his hand and threw it behind the seat. The woman seated beside the defendant moved but the defendant again refused to move, whereupon, the sheriff and his deputy arrested her and took her off the bus. When they attempted to remove her from the bus the defendant struck at the deputy but did not hit him. She kicked the sheriff three times on his leg, and reiterated that she would neither change her seat nor get off the bus. The officers placed her in jail.

In addition to being tried for a violation of sec. 4097dd, she was also tried at the same time for resisting arrest and found guilty upon that charge and adjudged to pay a fine of $100 and costs. She has not sought a writ of error to this judgment. The writ of error here is to the judgment of the court finding the defendant guilty of a violation of section 4097dd.

There are two questions presented by the assignments of [fol. 58] error. First, is the statute upon which the defendant was prosecuted, if construed as applicable to a passenger in interstate commerce, constitutional? Second, should the statute upon which the defendant was prosecuted be construed as limited in its operation to passengers in intrastate commerce, and therefore as inapplicable to the defendant?

The decisive questions present only questions of law. It is conceded by counsel for the defendant that the facts as found by the court below are binding upon the defendant.

Section 4097dd reads as follows:

"Violation by passengers; misdemeanor; ejection.—All persons who fail while on any motor vehicle carrier, to take and occupy the seat or seats or other space assigned to them by the driver, operator or other person in charge of such vehicle, or by the person whose duty it is to take up tickets or collect fares from passengers therein, or who fail to obey the directions of any such driver, operator or other person in charge, as aforesaid, to change their seat from time to time as occasions require, pursuant to any lawful rule, regulation or custom in force by such lines as to assigning separate seats or other space to white and [fol. 59] colored persons, respectively, having been first advised of the fact of such regulation, and requested to conform thereto, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than five

dollars nor more than twenty-five dollars for each offense. Furthermore, such persons may be ejected from such vehicle by any driver, operator or person in charge of said vehicle, or by any police officer or other conservator of the peace; and in case such persons ejected shall have paid their fares upon said vehicle, they shall not be entitled to the return of any part of same. For the refusal of any such passenger to abide by the request of the person in charge of said vehicle as aforesaid, neither the driver, operator, person in charge, owner, manager nor bus company operating said vehicle shall be liable for damages in any court."

In 1930 the General Assembly of Virginia enacted the statute known as Chapter 128, found in the 1930 Acts at pages 343 and 344. The title of the Act is "An Act to provide for the separation of white and colored passengers in passenger motor vehicle carriers within the State; to constitute the drivers of said motor vehicles special policemen, with the same powers given to conductors and motormen of electric railways by general law." The pres- [fol. 60] ent Code sec. 4097dd is the latter portion of the Act.

The Act provides that all passenger motor vehicles operating under Chapter 161-A of the Code shall segregate passengers according to color, and that any carrier failing to comply shall be fined.

The Act also provides that those so operating motor vehicles shall make no difference or distinction in the quality or convenience of the accommodations provided for the two races.

The Act further provides that the driver or operator or other person in charge of any motor vehicle above mentioned shall have the right, and he is directed, to require at any time when it may be necessary or proper for the comfort or convenience of passengers so to do, to change the designation so as to increase or decrease the amount of space or seats set apart for either race, and that any driver or operator of a bus who shall fail or refuse to carry out the provisions of this section shall be guilty of a misdemeanor.

The Act further provides that the operator of such vehicle shall be a special policeman and have all the powers of a conservator of the peace in the enforcement [fol. 61] of the provisions of the Act.

Then follows the latter portion of the Act now known as sec. 4097dd of the present Code (Michie), which has already been quoted.

It is conceded that on the bus upon which the defendant was riding there were provided equal facilities for both races, and that there was no difference or discrimination in the quality or convenience of the accommodations provided for the two races.

The Attorney General has made a motion to dismiss the writ of error, but the ultimate view of the court will render it unnecessary to pass upon that motion.

The public policy of the Commonwealth of Virginia, as expressed in the various legislative Acts, is and has been since 1900 to separate the white and Negro races on public carriers. As to railroads, see Acts of 1906, pages 236 and 237, carried in Michie's Code of 1942 as secs. 3962-3968; as to steamboats, see Acts of 1900, page 340, carried in Michie's Code 1942 as secs. 4022-4025; as to electric or street cars, see Acts of 1902-03-04, page 990, carried in Michie's Code 1942 as secs. 3978-3983, and as to motor vehicles see Acts of 1930, pages 343 and 344, carried in [fol. 62] Michie's Code of 1942 as secs. 4097z, 4097aa, 4097bb, 4097cc, and 4097dd.

So far as we are advised no case contesting the validity of any of these segregation Acts as applied to interstate passengers has been previously before this court, or any attempt made to repeal them.

Article 1, sec. 8, clause 3, of the Constitution of the United States provides that Congress shall have the power "to regulate commerce with foreign nations, and among the several states, and with the Indian Tribes." And Article 10 of the amendments to the Constitution of the United States provides: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people."

Under the tenth amendment there is reserved to the States the right to exercise the police power. The State may enact legislation under the authority of the police power, even though such legislation may incidentally affect interstate commerce.

The Virginia segregation statutes have been enacted under the police power of the State reserved to it in the tenth amendment to the U. S. Constitution.

[fol. 63] Unless it is shown that the statute here challenged directly or unreasonably interferes with interstate commerce it is a valid enactment. There is no evidence in this case that the rule of the carrier or the statute under which it was promulgated does so. The burden of proof on this issue rested upon the defendant and she has failed to carry it. *Bourjois, Inc.* v. *Chapman*, 301 U. S. 183, 57 S. Ct. 691, 81 L. ed. 1027.

It must be borne in mind that here the carrier is not contending that interstate commerce is unreasonably burdened by the statute. It does not contend that the statute places any added expense upon it or that it is inconvenienced or that it is against peace and good order to separate the races as it does under its rule. In fact the carrier was not even a party to this litigation.

The general rule is that if the enactment which requires the segregation of races according to color directly or unreasonably interferes with commerce it is not constitutional. *Hall* v. *DeCuir*, 95 U. S. 485, 24 L. ed. 547; *McCabe* v. *Atchison, T. & S. F. R. Co.*, 235 U. S. 151, 59 L. ed. 169, 35 S. Ct. Rep. 69. But unless the regulation unreasonably burdens commerce it is valid.

In *South Covington and C. St. R. Co.* v. *Kentucky*, 252 [fol. 64] U. S. 399, 64 L. ed. 631, 40 Sup. Ct. Rep. 378, it was held that a Kentucky street railway may be required by statute of that State to furnish separate cars or separate compartments in the same car for white and negro passengers, although its principal business is the carriage of passengers in interstate commerce between Cincinnati, Ohio, and Kentucky cities across the Ohio river. It was held that such a requirement affects interstate commerce only incidentally and does not subject it to unreasonable demands.

It was also held in *Smith* v. *State*, 100 Tenn. 494, 41 L. R. A. 432, 46 S. W. 566; *Alabama and B. R. Co.* v. *Morris*, 103 Miss. 511, 60 So. 11, Ann. Cas. 1915B, 613, and *So. R. Co.* v. *Norton*, 112 Miss. 302, 73 So. 1, that State statutes providing for separate but equal accommodations for white and colored races on railroads are valid police regulations and that they apply both to intrastate and interstate travel. In these cases comment is made that the Supreme Court has not directly passed upon the validity of such statutes and that the ultimate settlement of the question rests with that

court. It is also suggested in the *Morris case* that until that court decides against the validity of such statutes, the court wil be impelled to adhere to the belief that the [fol. 65] law is not only beyond criticism from a constitutional standpoint but is also a reasonable and wise exercise of the police power of the State.

There are cases from several States which support the contention that a segregation statute is unconstitutional as respects interstate passengers. See *Hart* v. *State*, 100 Md. 595, 60 Atl. 457; *Carrey* v. *Spencer*, 72 N. Y. S. R. 108, 36 N. Y. Supp. 886; *Washington B. & A. Elec. R. Co.* v. *Waller*, 53 App. D. C. 200, 289 Fed. 598, 30 A. L. R. 50. See also annotation in 30 A. L. R. at p. 55, where a number of cases are collected.

The defendant places strong reliance upon the case of *Hall* v. *DeCuir*, 95 U. S. 485, 24 L. ed. 547. That case arose in 1877 under a Louisiana statute enacted in 1869 which required that no regulation of any carrier should make any discrimination on account of the race or color of the passenger. The plaintiff was a member of the Negro race and she sought accommodations on an intrastate journey in Louisiana on a steamboat operated by one Benson, which plied on the Mississippi river between New Orleans, Louisiana, and Vicksburg, Mississippi. She was refused accommodations in the cabin set apart for white persons, and sued Benson for damages as provided in the statute. [fol. 66] He maintained that he was engaged in interstate commerce and that the Louisiana statute could have no application to him, and that he could promulgate any rules he desired. The Supreme Court of Louisiana held the statute applicable and that it was not a regulation of interstate commerce. The case was appealed to the Supreme Court of the United States and there reversed, the Court holding that the statute was an unreasonable burden upon interstate commerce and therefore in violation of the Constitution.

The court found as a fact that the Louisiana Act was a direct interference with interstate commerce; while in the case at bar the challenged Act has not been shown nor found to be an interference with interstate commerce.

In the *Hall case* it is apparent that the Louisiana Act was not enacted in pursuance of the police power of the State, while the Virginia Act was enacted under the police power.

It is also noted that the Louisiana statute prohibited the segregation of the races and that the rule of the carrier required such segregation, while in Virginia our statute not only requires separation of the races on public carriers but the carrier in this instance has a rule [fol. 67] promulgated under the statute providing for the seating of passengers in the bus, and reserving to itself the right to change such seating at any time during the trip.

The Louisiana statute and the rule of the carrier were in direct conflict. To enforce the rule of the carrier would have been to violate the terms of the statute, while to enforce the terms of the statute would have been to violate the rule of the carrier. No such situation exists in Virginia. In the case at bar the rule of the carrier, instead of being at variance with the provisions of the statute, is entirely consistent with it—the rule having been made under the terms of the statute.

There is a conflict in the many cases dealing with State statutes which require the separation of the white and colored races by public carriers. No case from the Supreme Court of the United States has directly considered the issue raised in the case at bar. It is needless for us to refer to all of the cases or to attempt to discuss and distinguish them. Each case must largely depend upon its own facts, and if a statute results in imposing a direct or unreasonable burden upon interstate commerce it should be declared unconstitutional. On the other hand, if it creates no such burden, it is not obnoxious to the Constitution.

[fol. 68] In 11 Am. Jur., Commerce, sec. 8, the rule controlling the division and classification of powers is stated thus:

"The constitutional provision which confers upon Congress the power 'to regulate commerce with foreign nations, and among the several States, and with the Indian tribes' grants all of the authority which the United States has over commerce. The respective powers of Congress and the States under this provision are divided into three fields: (1) That in which the authority of Congress is exclusive; (2) that in which the power of the State is exclusive; and (3) that in which the State may act in the absence of legislation by Congress. The line of division

between Congressional and State power over commerce is a question for judicial decision, depending upon the words of the Federal Constitution. * * *"

In *Covington & Cincinnati Bridge Co. v. Commonwealth of Kentucky*, 154 U. S. 204, 14 S. Ct. 1087, 38 L. ed. 962, it was held that the adjudications of the Supreme Court of the United States with respect to the power of the States over the general subject of commerce are divisible into three classes: "First, those in which the power of the State is exclusive; second, those in which the States may act in the absence of legislation by Congress; third, those [fol. 69] in which the action of Congress is exclusive and the States cannot interfere at all."

In the case at bar the defendant contends that Congress possesses the exclusive power in matters relating to interstate commerce, and that the States cannot act at all, while the Attorney General contends that the case at bar falls within the second class set out in the *Covington case*, and that the State may act in the absence of legislation by Congress.

It appears that certain members of Congress have attempted to induce Congress to invade the so-called segregation field, but so far without success. On three occasions it has expressly refused to legislate on the subject. On January 5, 1938, Representative Mitchell introduced the following bill in Congress to amend U. S. C. title 49, sec. 3(1). (See H. R. 8821, Congressional Record, Vol. 83, part 1, p. 74):

"It shall be unlawful to segregate any persons traveling as interstate passengers on any carrier subject to the provisions of this Act, or in railroad stations, waiting rooms, rest rooms, lunch rooms, restaurants, dining cars, or in any other accommodations provided for passengers traveling interstate, on account of such passengers' race, color, or religion; and any such discrimination or attempted dis- [fols. 70-71] crimination shall subject the offending carrier, its officers, agents, servants, and employees, to the penalties hereinafter provided for violation of this Act."

This bill was referred to the Committee on Interstate and Foreign Commerce but was never reported out.

On January 3, 1939, the bill was re-introduced as H. R. 182, (Congressional Record, Vol. 84, part 1, p. 27), and

again referred to the same committee. This committee was studying and developing the Interstate Commerce Act, and the Transportation Act of 1940, (See Pocket Supplement to U. S. C. A., Vol. 49, title Transportation), was finally enacted, but the bill was not reported out nor were its provisions incorporated in any other measure.

On January 3, 1941, the bill was re-introduced as H. R. 112 (Congressional Record, Vol. 87, part 1, p. 13), and for the third time it was not reported out of committee.

There is now pending in the Committee on Interstate and Foreign Commerce a bill known as H. R. 1925, which it is again sought to abolish segregation on public carriers. What the fate of this latest attempt will be, is, of course, not known.

This continued refusal of the Congress to legislate in [fol. 72] the segregation field demonstrates its desire that the matter be left where it is now; that is, that the several States, under their police power, be permitted to continue to legislate in this field, subject only to the limitation that they shall not directly or unreasonably burden interstate commerce.

The Supreme Court has held that a State may tax interstate commerce even though it increases the cost of doing business. Even interstate business must pay its way. The bare fact that one is carrying on interstate commerce does not relieve him from many forms of State taxation which add to the cost of his business.

In *McGoldrick* v. *Berwind-White Coal Mining Co.*, 309 U. S. 33, 60 S. Ct. 388, 84 L. ed. 565, Mr. Justice Stone, speaking for the court, said: "Section 8 of the Constitution declares that Congress shall have power * * * to regulate commerce with foreign nations and among the several States. * * * In imposing taxes for State purposes a State is not exercising any power which the Constitution has conferred upon Congress. It is only when the tax operates to regulate commerce between the States or with foreign nations to an extent which infringes the authority conferred upon Congress that the tax can be [fol. 73] said to exceed constitutional limitations." Citing cases.

And again the Justice said: "In few of these cases could it be said with assurance that the local tax does not, in some measure, affect the commerce or increase the cost

of doing it. But in them as in other instances of constitutional interpretation so as to insure the harmonious operation of powers reserved to the States with those conferred upon the national government, courts are called upon to reconcile competing constitutional demands, that commerce between the States shall not be unduly impeded by State action and that the power to lay taxes for the support of State government shall not be unduly curtailed."

Thus a State may tax interstate commerce and increase the cost of doing that business. Commerce is bound to be affected and burdened. However, under the case just referred to, as long as the State tax does not infringe the authority conferred upon Congress to regulate commerce among the several States, it is not invalid.

If State taxation statutes are constitutional even though they add to the cost of doing an interstate business, it would certainly seem logical that a segregation statute which [fol. 74] is not shown to affect interstate commerce in any way, except perhaps to improve it, would also be valid. If the defendant here and her seatmate had complied with the rule of the carrier and had occupied the rear vacant seats assigned them, then two of the six white passengers could have been seated. Thus complying with the rule of the carrier and the statute not only would not have directly or unreasonably impaired interstate commerce but it would have aided it.

It is conceded that in so far as the commerce clause is concerned the Virginia Act is valid, if restricted in its application to intrastate passengers. It is said that the Act is severable, and we are asked to so hold, and to invalidate it as to interstate passengers.

The language of the statute embraces all motor vehicles and all passengers, both interstate and intrastate. If the statute were held to be valid as to intrastate passengers and invalid as to interstate passengers, a condition would exist that would adversely disturb the peace and welfare. Then an interstate white passenger could occupy the rear seat with an intrastate Negro passenger, and an interstate Negro passenger could occupy a front seat with an intra- [fol. 75] state white passenger. This would tend to confusion and disorder, and in effect, to allow the interstate Negro and white passengers to have the run of the entire bus, while confining the intrastate white and colored pas-

sengers to the front and rear of the bus, respectively. The result would be that the Segregation Act in its entirety would effectively be disrupted.

The point raised for the first time in the defendant's reply brief that the Act is not constitutional because it delegates legislative power to a private corporation brings into the case a question not raised in the pleadings in the court below or in the assignments of error or in the petition for a writ of error. It was not an issue in the case, and the attempt to inject it into the case for the first time by asserting it in the reply brief is violative of rule 22 of this court.

However, we do not think there would be any merit in the point if it had been properly raised. The statute, when read in its entirety, clearly demonstrates that no power is delegated to the carrier to legislate and determine what conduct shall be considered a crime. The statute simply describes conditions which must first be found to exist before it be- [fol. 76] comes applicable. There is no uncertainty about the conditions that must exist before the offense is complete. The statute itself condemns the defendant's conduct as a violation of law and not the rule of the carrier. An interesting and exhaustive annotation on "Permissible Limits of Delegation of Legislative Power" is found in 79 L. ed. of the U. S. Supreme Court Reports, beginning at page 474, following the case of *Panama Refining Co.* v. *Ryan*, 293 U. S. 388. At page 496 (79 L. ed.) the specific point is discussed and the pertinent cases cited. They are: *Whaley* v. *State*, 168 Ala. 152, 52 So. 941, 30 L. R. A. (N. S.) 499; *Samuelson* v. *State*, 116 Tenn. 470, 95 S. W. 1012, 115 Am. St. Rep. 805, and *Re O'Neill*, 41 Wash. 174, 83 P. 104, 3 L. R. A. (N. S.) 558, 6 Ann. Cas. 869.

In Virginia the statute demands equality of treatment of the white and Negro races by the carriers as well as equality in the facilities provided by the carriers for them. A statute which would permit inequalities in these respects would be invalid. Here the segregation statutes are enforced against the members of the white as well as against those of the Negro race. They must be enforced equally and without discrimination against both races. *Davis* v. *Commonwealth*, 182 Va. 760, 30 S. E. 2d 700.

We are of the opinion the statute does not result in a [fol. 77] discrimination against either the white or the Negro race, and that it does no violence to the fourteenth

amendment to the U. S. Constitution (see *Plessy* v. *Ferguson*, 163 U. S. 537, 41 L. ed. 256).

The silence of Congress on this subject places it in the "second" category outlined in *Covington & Cincinnati Bridge Co.* v. *Kentucky*, *supra*, where the State is allowed to act in the absence of legislation in this field by Congress. If Congress desires to nullify State segregation statutes as applicable to interstate passengers it has the power to do so under the commerce clause. However, until Congress pre-empts this legislative field by proper enactment the States continue to have the right to segregate the white and colored races on public carriers. That Congress probably will not enter this field is evidenced by the fact that since January 5, 1938, for more than seven years it has refused to act, though at each session since then it has had the subject before it and has been urged to abolish segregation.

Our conclusion is that the statute challenged is a reasonable police regulation and applies to both intrastate and interstate passengers. It is not obnoxious to the commerce clause of the Constitution.

The judgment is affirmed.

Affirmed.

[fol. 78] In Supreme Court of Appeals of Virginia

Record No. 2974

Irene Morgan, Plaintiff in error,

against

Commonwealth of Virginia, Defendant in error

Upon a writ of error and supersedeas to a judgment rendered by the Circuit Court of Middlesex county on the 18th day of October, 1944.

Judgment—June 6, 1945

This day came again the parties, by counsel, and the court having maturely considered the transcript of the record of the judgment aforesaid and arguments of counsel, is of opinion, for reasons stated in writing and filed with the record, that there is no error in the judgment complained of. It is therefore considered that the same be affirmed, and

that the plaintiff in error pay to the Commonwealth thirty dollars damages, and also her costs by her expended about her defense herein.

Which is ordered to be certified to the said circuit court.

IN SUPREME COURT OF APPEALS OF VIRGINIA

[Title omitted]

RECITAL AS TO FILING OF PETITION FOR REHEARING—July 2, 1945

The petition of plaintiff in error in this cause for a rehearing of the judgment of this court rendered on the 6th day of June, 1945, was this day received and the filing thereof is here noted of record.

IN SUPREME COURT OF APPEALS OF VIRGINIA

ORDER DENYING PETITION FOR REHEARING—September 4, 1945

On mature consideration of the petition of the plaintiff [fol. 79] in error to set aside the judgment entered herein on the 6th day of June, 1945, and grant a rehearing thereof, the prayer of the said petition is denied.

[fol. 80] IN THE SUPREME COURT OF APPEALS OF VIRGINIA

PETITION FOR APPEAL AND ASSIGNMENT OF ERRORS

To the Honorable Preston W. Campbell, Chief Justice of the Supreme Court of Appeals of Virginia:

Now comes Irene Morgan, appellant in the above-entitled cause, by her attorneys, and respectfully shows that:

On the 6th day of June, 1945, in the above-entitled cause, the Supreme Court of Appeals of Virginia, the highest Court of said State in which a decision in said cause could be had, rendered a judgment against appellant and in favor of appellee, affirming a judgment of the Circuit Court of the

County of Middlesex, Virginia, designated as Case No. 330, in which judgment said Circuit Court convicted appellant of a violation of the statute of the State of Virginia known and designated as Chapter 128, Acts of Assembly of 1930, pages 343-344, and sentenced her to pay a fine of Ten ($10.00) Dollars.

On the 2nd day of July, 1945, appellant filed with the Supreme Court of Appeals of Virginia her Petition for Rehearing, which Petition was denied by said Court on the 4th day of September, 1945, whereupon the judgment of said Court became final. In the record and proceedings and in the rendition of said judgment, and in permitting the same to become final, manifest error occurred greatly to appellant's damage, whereby appellant is aggrieved and does hereby appeal from said judgment to the Supreme [fol. 81] Court of the United States.

In the record and proceedings and in the rendition of said judgment there was drawn in question by appellant herein the validity of the above-cited statute of the State of Virginia under which she was convicted, on the ground that said statute was in contravention of, and repugnant to, the provisions of Clause 3 of Section 8 of Article I of the Constitution of the United States, which confers upon the Congress the exclusive right to regulate commerce among the several States. The decision and judgment of the Supreme Court of Appeals of Virginia were in favor of the validity of said statute and against the rights, privileges and exemptions specifically set up and claimed by appellant herein under said clause of the Constitution of the United States, all of which is fully apparent in the record and proceedings of the cause and in the rendition of said decision and judgment.

Assignment of Errors

Appellant assigns the following errors in the record and proceedings of said cause:

I

The Supreme Court of Appeals of Virginia erred in rendering judgment affirming the judgment of the Circuit Court of the County of Middlesex, Virginia, holding that the statute of the State of Virginia, known as Chapter 128, Acts of Assembly of 1930, pages 343-344, as applied to appellant, a passenger traveling on an interstate

journey in a vehicle moving in interstate commerce, is not repugnant to the provisions of Clause 3 of Section 8 of Article I of the Constitution of the United States.

II

The Supreme Court of Appeals of Virginia erred in rendering judgment affirming the judgment of the Circuit [fol. 82] Court of the County of Middlesex, Virginia, holding that the powers reserved to the States under the tenth Amendment of the Constitution of the United States include the power to enforce a State statute compelling the racial segregation of passengers on public carriers against a person traveling on an interstate journey in a vehicle moving in interstate commerce.

PRAYER FOR REVERSAL

For which errors appellant prays that the said decision and judgment of the Supreme Court of Appeals of Virginia in the above-entitled cause be reviewed by the Supreme Court of the United States, that the appeal herein operate as a supersedeas and suspension of the judgment of the Circuit Court of Middlesex County, Virginia, that the said decision and judgment of the Supreme Court of Appeals of Virginia be reversed, and that a judgment be rendered in favor of appellant.

Irene Morgan, Appellant, By William H. Hastie, Thurgood Marshall, Spottswood W. Robinson, III, Counsel for Appellant.

Spottswood W. Robinson, III, Consolidated Bank Building, Richmond, 19, Virginia.

[fols. 83-84] IN THE SUPREME COURT OF THE UNITED STATES

[Title omitted]

ORDER ALLOWING APPEAL—November 19, 1945

Irene Morgan, the appellant in the above entitled cause, having prayed for the allowance of an appeal in this cause to the Supreme Court of the United States from the judgment rendered and entered in the above entitled cause by the Supreme Court of Appeals of Virginia, and having, on

the 19th day of November, 1945, duly presented and filed her Petition for Appeal and Assignment of Errors and Prayer for Reversal therein contained, and a Statement as to Jurisdiction, pursuant to the statutes and rules of the Supreme Court of the United States in such cases made and provided, and the same having been considered:

It is ordered that an appeal be and hereby is allowed to the Supreme Court of the United States from the Supreme Court of Appeals of Virginia as prayed in said petition, and that the Clerk of the Supreme Court of Appeals of Virginia shall prepare and certify a transcript of the record and proceedings in the above-entitled cause and transmit the same to the Supreme Court of the United States within forty (40) days from the date hereof.

It is further ordered that bond for costs on appeal be and the same hereby is fixed in the sum of 200 Dollars, and that upon approval of bond in said amount the appeal herein shall operate as a supersedeas and suspension of the judgment of the Circuit Court of the County of Middlesex, Virginia, entered in the above-entitled cause.

Dated this 19th day of November, 1945.

Harlan F. Stone, Chief Justice of the United States.

[fol. 84a] Bond on appeal for $200.00 approved. Omitted in printing.

[fol. 85] Citation in usual form showing service on M. Ray Doubles. Omitted in printing.

[fol. 86] IN THE SUPREME COURT OF APPEALS OF VIRGINIA

[Title omitted]

PRAECIPE FOR TRANSCRIPT OF RECORD

To the Clerk of said Court:

You are hereby requested to make a transcript of the record to be filed in the Supreme Court of the United States pursuant to an appeal in the above-styled cause, and to

include in said transcript of record the following papers and exhibits, to-wit:

1. All the original record in the Supreme Court of Appeals of Virginia, on writ of error to the Circuit Court of the County of Middlesex, Virginia.

2. The opinion of the Supreme Court of Appeals of Virginia, rendered June 6, 1945.

3. The judgment of the Supreme Court of Appeals of Virginia, entered June 6, 1945, affirming the judgment of the Circuit Court of the County of Middlesex, Virginia.

4. The certificate of the Clerk of the Supreme Court of Appeals of Virginia noting the filing of the petition for rehearing.

5. The judgment of the Supreme Court of Appeals of Virginia, rendered September 4, 1945, denying the petition for rehearing.

6. The petition for appeal to the Supreme Court of the United States, including the assignment of errors and the prayer for reversal.

7. The statement of Irene Morgan, Appellant, in support of the jurisdiction of the Supreme Court of the United [fol. 87] States to review the above-styled cause on appeal.

8. The order of the Supreme Court of the United States allowing appeal and fixing the amount of bond.

9. The notice directing attention of appellee to the provisions of Rule 12, paragraph 3, of the rules of the Supreme Court of the United States, with acknowledgement of service of said notice and acknowledgement of service of copies of the petition for appeal and assignment of errors, order allowing the appeal, and statement in support of jurisdiction.

10. The citation on appeal to the Commonwealth of Virginia, and the certificate of service thereof upon the Commonwealth of Virginia.

11. The bond for costs on appeal and approval thereof.

12. This praecipe, with acknowledgement of service thereof.

13. Certificate of the Clerk of the Supreme Court of Appeals of Virginia to the correctness of the record as to this praecipe.

The said transcript is to be prepared as required by law and the rules of the Supreme Court of Appeals of Virginia and the rules of the Supreme Court of the United States,

and is to be filed in the Office of the Clerk of the Supreme Court of the United States within forty (40) days from the 19th day of November, 1945.

Irene Morgan, Appellant, by William H. Hastie, Spottswood W. Robinson, III, of Counsel for Appellant.

Due and legal service of the above praecipe is hereby acknowledged and accepted, and all other and further service is hereby waived.

This 6th, day of December, 1945.

Abram P. Staples, Atty. Gen. of Virginia, by M. Ray Doubles, Asst. Atty. Gen. of Virginia.

[fol. 88] Clerk's certificate to foregoing transcript omitted in printing. (Seal.)

[fol. 89] IN THE SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS ON WHICH APPELLANT INTENDS TO RELY AND DESIGNATION OF PARTS OF RECORD—Filed January 5, 1946

Pursuant to Rule 13, page 9 of the Revised Rules of this Court, appellant states that she intends to rely upon all the points in her Assignment of Errors.

Appellant deems the entire record as filed in the above entitled cause, necessary for consideration of the points relied upon, except for the following parts of the record which are not essential and may be omitted from the record to be printed by the Clerk of the Supreme Court of the United States.

1. Those portions of the Petition for Writ of Error entitled "Statement of the Facts" and "Argument" beginning at page 3 and ending in the middle of page 22 of the record as filed and printed in the Supreme Court of Appeals of Virginia.

2. The "Record of Case 331. File 40," beginning near the bottom of page 52 and ending in the middle of page 54

of the record as filed and printed in the Supreme Court of Appeals of Virginia.

William H. Hastie, Spottswood W. Robinson, III,
Attorney for Appellant.

Service acknowledged this 29th day of December, 1945.
Abram P. Staples, Attorney for Appellee.

[fol. 89a] [File endorsement omitted.]

[fol. 90] IN THE SUPREME COURT OF THE UNITED STATES

DESIGNATION OF APPELLEE OF ADDITIONAL PARTS OF RECORD TO BE PRINTED—Filed January 4, 1946

The appellee, Commonwealth of Virginia, designates the following additional parts of the record as filed which it thinks are necessary for the consideration of appellant's assignments of error, to-wit:

Record from Supreme Court of Appeals of Virginia.

All parts of the said Record omitted in the appellant's designation, viz.:

1. Those portions of the Petition for Writ of Error entitled "Statement of the Facts" and "Argument" beginning at page 3 and ending in the middle of page 22 of the Record as filed and printed in the Supreme Court of Appeals of Virginia.

[fol. 91] 2. The "Record of Case 331. File 40", beginning near the bottom of page 52 and ending in the middle of page 54 of the Record as filed and printed in the Supreme Court of Appeals of Virginia.

Commonwealth of Virginia, by Abram P. Staples,
Attorney General of Virginia and Counsel for Appellee.

Service of the foregoing statement of designation of additional parts of the Record the appellee thinks necessary for the consideration of the assignments of error relied on by the appellant is hereby accepted, and the receipt of a

copy thereof is hereby acknowledged for and on behalf of the appellant this 29th day of December, 1945.

Spottswood W. Robinson, III, Attorney for Appellant.

[fol. 91a] [File endorsement omitted.]

[fol. 92] SUPREME COURT OF THE UNITED STATES

ORDER NOTING PROBABLE JURISDICTION—January 28, 1946

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.

Mr. Justice Jackson and Mr. Justice Rutledge took no part in the consideration of this question.

Endorsed on Cover: File No. 50,407. Virginia, Supreme Court of Appeals. Term No. 704. Irene Morgan, Appellant, vs. Commonwealth of Virginia. Filed December 29, 1945. Term No. 704 O. T. 1945.